No. thirty eight –

THE OFFICE

OF

VICE-ADMIRAL OF THE COAST.

BEING SOME ACCOUNT OF THAT ANCIENT OFFICE.

BY

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Law

TO

THE HON. SIR LEWIS W. CAVE, KNT.,

ONE OF HER MAJESTY'S JUDGES OF THE
HIGH COURT OF JUSTICE,

IN GRATEFUL REMEMBRANCE OF MUCH KINDNESS

This work

IS DEDICATED BY HIS FORMER PUPIL,

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THIS work is written for the purpose of preserving some record of, and of giving some information on an ancient office, now fallen into desuetude, the nature and duties of which had become almost unknown.

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CHAPTER I.

EARLY MARITIME JURISDICTION.

THE term "Vice-Admiral of the Coast" is almost unknown. Browne, Clerke, Godolphin, Zouch, Exton, Hale, Justice, Malynes, Molloy, Grotius, and Selden, have written on the laws of the sea, on the office of the Lord High Admiral, and on the law and practice of the Admiralty, but it is a singular fact that these eminent writers are silent on the subject of "Vice-Admiral of the Coast" (otherwise termed "of the County"), and the question is at present, so far as the great majority of naval men, and men of law, are concerned, shrouded in mystery.

We hope that in the following pages,

sufficient light may be thrown on this interesting subject to raise the mists which have nearly enveloped it. The reader will be surprised to find that the Vice-Admiral of the Coast is both a judicial and a ministerial officer; that he has power* to hold a court of justice in his county; that his office is of great antiquity; that it has only fallen into desuetude within the last hundred years; and that the appointment to the office is still made for a few counties of England, for the West Coast of Scotland, and for two of the Provinces of Ireland. The appointment was formerly made by the Lord High Admiral, and is now made by the Commissioners for executing that office.

In order to explain the subject clearly, it is necessary to dilate to some small extent on the office of the Lord High Admiral, by whom the appointment used to be conferred, and also on the civil and criminal jurisdiction of the Admiralty in past times.

* See p. 73.

The word *Admiral* has been derived by some from the Greek ἁλμυρὸς, because his jurisdiction extends over the *salt* seas; by others, from the Saxon *aen mere eal* (*all over the sea*), and by others again, from the Arabic *amir*, or *emir* (*prefect*). In the last mentioned tongue, the appellation was also given to commanders on land; thus, in Archbishop Turpin's famous "Chronicle," the Sultan or *Admiral* of Babylon is spoken of.

Sir Henry Spelman has recorded his opinion that the Admiral was not known as such in England until the beginning of the reign of Edward I. (1272), but Exton and Godolphin insist that not only his office, but also his designation, was known at a much earlier period. In an ancient record in the Tower of London, entitled *Fasciculus de superioritate maris Angliæ et Jure officii admirallitatûs in eodem*,* it appears that the

* A bundle of papers of the year 1338, in the Tower of London, intituled *Fasciculus de superioritate maris*, consists of six manuscripts, viz., 1st.: Letters Patent of the twelfth year of the reign of Edward III., which name Commissaries charged to examine certain documents transmitted to them, sealed with the King's seal, and to

Admiralty of England and its jurisdiction was far more ancient than Edward I., being exercised from age to age successively. And Lord Coke says that the Admiral and Court of Admiralty were "from time out of mind,"

make a report as to the best means to be adopted for the defence and maintenance of his rights. 2nd.: Letters from the Commissaries asking for further instructions. 3rd.: An ordinance, concerning the commercial relations of England and Flanders, given at Bruges in 1297. 4th.: A Treaty of Alliance between Henry III., King of England, and Alphonso, King of Castille. 5th.: *De emendis super arrestis.* 6th.: A memorial addressed to the ambassadors of the Kings of France and England after the peace of 1303. The documents, referred to in the Letters Patent (the first MS.), are the four last MS. of the collection. The collection does not contain the answers of the Commissaries to the Articles of the Letters Patent. The following is an extract from the Letters Patent:—"Infra scripti sunt articuli generales super quibus, et fines ad quos, justiarii domini nostri Regis sunt consulendi, et Dominus noster Rex de eorum consilio certificandus in cancellariâ suâ. . . . . Item ad finem, quòd resumatur et continuetur ad subditorum prosecutionem forma procedendi quondam ordinata et inchoata per avum—(*i.e.*, Edward I.,) domini nostri regis et ejus consilium ad retinendum et conservandum antiquam superioritatem maris Angliœ, et jus officii admirallatûs in eodem, quoad corrigendum interpretandum declarandum et conservandum leges et statuta per ejus antecessores Angliœ reges dudum ordinata; ad conservandum pacem et justitiam inter omnes gentes nationis cujus cunque per mare Angliœ transeuntes; et ad cognoscendum super omnibus in contrarium attemptatis in eodem; et ad puniendum delinquentes, et damna passis satisfaciendum; quœ quidem leges et statuta per dominum Richardum quondam regem Angliœ in reditu suo a terra sancta, correcta fuerunt, interpretata, declarata, et in insulâ Oleron publicata, et nominata in lingua Gallicana *la ley Olyroun*.

although the Admiral was at first called *capitaneus maris* and by other names.

Selden, (*De Dominio maris* ch. xxiv.), says that a great number of laws, or regulations, on maritime matters were made by the kings of England, and that Richard I., returning from the Holy Land, revised and proclaimed them afresh in the Isle of Oleron, whence they take their name of *Rooles or Judgments of Oleron*. This opinion has been followed by all other writers on the maritime law of England.

It is acknowledged that Richard I., having been arrested after his shipwreck near Aquila, the 20th December, 1192, by order of the Duke of Austria, was given up to the emperor Henry VI.; but he recovered his liberty in 1194, and returned to England by way of Flanders. Henry (History of England, Book iii., ch. vi.), says that he can find no trace of the stay of Richard I. at Oleron. Hallam (View of the State of Europe during the Middle Ages, Book iii., ch. ix.), says the same thing. Mr. Luder (Tracts on various

subjects in the Law and History of England, p. 433), says the same. Selden quotes the *Fasciculus de superioritate maris* in support of his contention.

Nevertheless, as Eleanor, Duchess of Guyenne, and mother of Richard I., did not bring the fief of Aquitaine in dowry to his father (Henry II.) until 1132; as Richard I. returned from the Holy Land in 1193; as the text of the *Rooles of Oleron* is redundant with Gascon phrases, and not with those of Normandy or of England; and as all the orders refer to voyages from Bordeaux to St. Malo, Caën, Rouen, and French ports, but not to the Thames, to England, or to Ireland, it is more probable that the tradition is true which attributes the laws to the Duchess herself. They would appear to have been formed by her, on her return from the Holy Land, from the code of sea laws, *Consolato del mare*, then in force in the Levant, and adapted by her to the necessities of the shipping of Guyenne. These laws, therefore, would have obtained

on the sea coast of Guyenne and of the Isle of Oleron, and would have been in force for upward of sixty years before the return of Richard I. from the Holy Land. This king, on his return to England, and in England, not in Oleron, would have revised the laws of Oleron—*correcta fuerunt*, says the Fasciculus—and preserving their ancient appellation, the name bestowed on them by his own mother, introduced them to this country* either as auxiliary to, or as the foundation of, the English maritime courts. This hypothesis reconciles the many differences of opinion on the subject.

* "On the great ocean seas, the first laws were made by the inhabitants of the Island of Oleron, situate on the sea coast of France, near St. Martin de Rea, against the River Charente, which was called *Le Roll d'Oleron;* by this the controversies on that coast were determined; and the said laws were afterwards dispersed and brought into use in England and the Low countries; whereupon divers statutes, both in England and Scotland, have been enacted for seafaring business; and in like manner divers ordinances in the Low countries, especially since their fishing trade began."—Lex Mercat: by Malynes, p. 120, (1622). The Rooles of Oleron were the first maritime code known in England. They were confessedly promulgated by Richard I. "for the better regulation of merchants, owners, and masters of vessels, and mariners, and all seafaring persons," and could not have been fully enforced in any other than the Admiralty court.

It is generally believed that the promulgation of these Rooles was a great advantage to the administration of the maritime law in England, and these ordinances may possibly have been the first maritime code introduced into this country; but it is not reasonable to suppose that all maritime Law was unknown before the introduction of this code. On the contrary, it is evident from the Ordinance made at Grimsby,* in the reign of Richard I., that the system of Admiralty jurisdiction was then in full force, that the Admiral was distinctly recognised, that his lieutenants were duly nominated, and that the acts of each and every of them were *of record.* The Rooles d'Oleron make no mention of any of these matters; it is therefore evident that they must have been acquired from other sources, and it is far from probable that the complete system of Admiralty jurisdiction revealed by this Ordinance of Grimsby had been formed and elaborated between 1193, the

* Black Book of the Admiralty, vol. I., p. 65.

date of the introduction of the Rooles d'Oleron by Richard I. into England, and 1199, the year of the decease of that monarch.

Further we know from Florentius, of Worcester, that King Henry I. gave orders to his *Butsecarli* to guard the seas, and to take care that no person from the parts of Normandy approached the English coasts. *Butsecarli*, or, in old English, *Butescarles*, were officers belonging to the Navy, or sea soldiers, while *Hutesecarli* were domestic servants or officers in the Court. They sometimes defended the sea coasts with land forces. Selden says that the Records wherein the Royal Commissions for the delegation of this command were wont to be registered, extending from the coming in of the Normans to the reign of King John, are lost.*

In the Ordinance made at Ipswich in the reign of King Henry I., we find the very words "Admiral" and "Lieutenant" employed; reference is also made to the

* Selden Mar. Claus. lib. ii. 288.

"sessions" held by the Admiral.* Again, by an Ordinance made at Hastings about A.D. 1201, in the reign of King John, all ships which do not strike their sails to the "Admiral" or to his "Lieutenant," are to be treated as enemies.†

We also find that in the fifteenth year of Henry III. Peter de Rivall was given for his life the "guard of all ports and of all the coast of the sea of England, with all the liberties and free customs of the said ports and sea coast appertaining,"‡ and that in the forty-eighth year of the same monarch, Thomas de Moleton had, as *capitaneus et custos maris*, authority given him to guard the sea *and the maritime parts of the eastern shore.*§ In the same reign the inhabitants of the Cinque Ports are described as guarding *the coast of England and the sea.*|| We

* Black Book of Ad., vol. I., p. 64.

† Ibid, p. 131.

‡ 6 Coke Rep.

§ Rot. Pat. 48 Henry III., part i., memb. 3; and Rot. claus. 48 Henry III., memb. 3.

|| Rot. Pat. 27, Henry III., part i., memb. 3 in *dorso*.

may therefore conclude that some system, though, maybe, a rough and unskilful one, of maritime jurisdiction existed in England before the introduction of the Rooles d'Oleron.

The record of the Ordinance of Grimsby states that it was ordained "by the advice of many lords of the realm, that when ships should be arrested for the king's service, that the king shall write, by his letters patent, to the Admiral to arrest the ships, more or less, at the king's pleasure, and according as he hath occasion, and the Admiral shall write to his *lieutenants* to put the same in execution. And the cause was, because the Admiral and his lieutenants are of record."*

Selden, in his "Dissertation on Fleta"† (cap. viii., s. 4), written during the seventeenth

* Black Book, vol. i., p. 67. How the Admiralty Court ceased to be a Court of Record does not very clearly appear. It has now been reconstituted a Court of Record, for all intents and purposes, by 24 Vict., c. 10, s. 14. In the Record Office there is a MS. labelled "Placita in curia admiralitatis, 15 Rich. II.," from which it appears that the Admiralty Court was of Record at that time. (Note by Sir Travers Twiss. Ibid.)

† *Fleta* itself is the work of an anonymous author, and was written in the time of Edward I.

century, says: "In admiralitatis Curiâ quœ in titulis *ad legem Rhodiam de Jactu*, *de Nautico fœnore*, *de usuris nauticis*, *de exercitoria actione* occurrunt, alia ad rem Nauticam attinentia è jure Justinianeo adhiberi solent, atque ex corpore atque interpretibus ejus expressum depromi. Sed ita ut etiam leges *Oleronianœ*, seu consuetudines marinœ sic dictœ, uti etiam alias apud gentes, commisceantur et primariam obtineant auctoritatem." The *Consolato del Mare*, the Maritime Rules of Wisby, and in later years the *Recessus civitatum Hanseaticarum* of 1591 and of 1614, also acquired great authority in England.* To these may be added the Black Book of the Admiralty, which is supposed to have been commenced in the reign of Edward III., and to have been continued during the reigns of Richard II. and Henry IV.†

* Duck *de auctor. juris civil.* lib. ii., cap. xxv.

† An Ordinance of the fourth year of Henry IV. (1402) directs that "auxi les dites admiralles usent leurs leys tout soulement par la ley de Oleron et ancienne ley de la Mer, et par la ley d'Angleterre, et ne mye par custum ne par null autre manere." (Parliamentary Rolls iii., p. 498.)

CHAPTER II.

SESSIONS OF THE VICE-ADMIRAL.

IT is in the Black Book of the Admiralty that we find the earliest records of authority concerning vice-admirals of the coast.* In the Ordinance of Grimsby, already mentioned, they are termed *lieutenants;* in other

* These *Vice-Admirals*, or *deputies*, must not be confused with *Admirals;* which mistake may easily occur, since during the latter part of the reign of Edward I., and in the whole of the reigns of Edward II., Edward III., and Richard II., there appear to have been two and sometimes three *Admirals* in power at the same time, styled of the North, West, and South. When the south coast, as sometimes was the case, was comprehended in the west, there were only two Admirals. During the reign of Richard II., there is only one person who is styled Admiral of England—viz., Richard Fitzallan, Earl of Arundel. In the reign of Edward I., William de Liburne is called "Admiral of the Sea of England," and had no partner in authority. In the reign of Henry IV., several persons were styled "Admirals of England," and in the reign of

passages we find them described as *deputies*, or as *commissaries*. In later writings they are called *Vice-Admirals*. "When one is made admiral," says the Black Book (Vol. 1, A. 1), "he must first ordain and substitute for his *lieutenants*, *deputies*, and other officers under him, some of the most loyal, wise, and discreet persons in the maritime law and ancient customs of the seas, which he can anywhere find." The Admiral is next "to write to all his lieutenants, deputies, and

Henry VI., these great officers began to be styled "Admirals of England, Ireland, and Aquitaine." This title was borne by Admirals down to the reign of Charles II., although the names of Wales, Calais, &c., are sometimes added. James, Duke of York, is the first who is styled "Admiral of England, Scotland, and Ireland." When the Duke of York (afterwards James II.), was excluded from office by the Test Act, in 1673, the king refused to confer the office on any person, and ordered it to be executed by commissioners, now termed the Commissioners for executing the Office of Lord High Admiral of the United Kingdom of Great Britain and Ireland. Since 1673, there have only been three Lord High Admirals—viz., H.R.H. Prince George of Denmark, in 1702, Thomas, Earl of Pembroke, in 1708, during the reign of Queen Anne, and H.R.H. the Duke of Clarence, in 1827. But although executed by commissioners, the office is held by the Sovereign of this realm, who holds it in a capacity distinguishable from the regal character. Her Majesty is spoken of as "the Queen in her office of Admiralty." This distinct capacity becomes more apparent when questions arise whether certain *droits* appertain to her *jure coronæ*, or in virtue of the above office.

other officers whatsoever, throughout all the sea coasts through the whole realm, to know how many ships, barges, balingers, and other vessels of war the king may have in his realm when he pleaseth or need shall require, and of what burthen they are, and also the names of the owners and possessors thereof," and "to know, likewise, by good and lawful *inquests taken before the said lieutenants*, deputies, or other officers of the Admiralty, how many fighting mariners are in the realm." The reason of this ordinance was, that in case the king or his Council (which he had always about him for advice in matters of law, and who managed the affairs of the navy) should make inquiries of the Admiral, they might always know what force might be serviceable by sea.

Again, it was ordained at Hastings, by King Edward I. "and his lords," that "though divers lords had several franchises to try pleas in ports, that neither their seneschals (stewards) nor bailiffs should hold plea *if it concerns merchant or mariner*, as well

by deed, as by charter of ships, obligations, and other facts, though the same amounts but to twenty shillings or forty shillings; and if anyone is indicted that he hath done to the contrary, and be thereof convicted, he shall have the same judgment as above said. Item: Any contract made between merchant and merchant, or merchant or mariner beyond the sea, or within the flood-mark, *shall be tried before the Admiral, and nowhere else*, by the ordinance of the said King Edward and his lords. Item: Those who are indicted that they hold plea of hue and cry, or bloodshed committed on salt water, within the flood-mark, if they are thereof convicted, they shall be imprisoned for two years, and then shall be fined according to the pleasure of the king or the Admiral."*

The above words, *before the Admiral*, evidently signify the Admiralty courts or sessions, and are not to be restricted to the personal presence of the Admiral (see note, p. 31). That

* Black Book, Vol. I., p. 69.

the lieutenants then held sessions is undoubted, for at an earlier page of the same book (p. 49), we find that, "the lieutenants of the Admiral may not, in their sessions, try life or member without a special warrant." From this negative evidence we may gather that the lieutenants had a judicial power, and might, without special warrant, try in their sessions all such matters as did not incur the punishment of death or mutilation. Further, that they were intrusted with an executive authority to guard the sea coasts, appears from the articles and appointments of the Lieutenant-General of the Admiral, who (Black Book, Vol. I., p. 409) is to appoint and make *good and loyal deputies, surveyors, and guardians of the office of Admiralty*, by whom he shall be willing to be answerable to the high Admiral for all the coasts of the sea, when need and occasion shall be. And as another duty of the Vice-Admiral, we find in the beginning of the fifteenth century a mandate from the Admiral to his beloved J. de K. "*locum tenenti*, nostro in partibus borialibus"

(lieutenant in the northern parts), to arrest twenty-four ships whenever they might be found within a certain district (apparently within his Vice-Admiralty) "in quibuscum que portubus, seu locis per costeras maris a portu Villœ N. et ibidem, usque portum B. et ibidem inveneri contigerint," and to send them to the port of Orwell for the king's use (Ibid).

Cotton (Tower Records, p. 475), refers to the appointment by the Admiral of a deputy "for certain counties of the north" in the eleventh year of Henry IV. (1409); and Letters Patent of the thirteenth year of the same reign appoint Thomas Beaufort, "Admiral of England, Ireland, and Aquitaine" for life, with all the powers usually conferred of hearing complaints, and doing justice in maritime causes; of enquiring into deaths and mayhem, and of appointing deputies, "*et ad alios idoneos et sufficientes, quociens vos ad hoc vacare non poteritis, ad prœmissa omnia et singula facienda loco vestro substituendo et deputandi.*" Neale, writing in 1704, refers to

this power of the Admiral of appointing deputies for particular parts of the sea coast,* and Godolphin also speaks of the Admiral having several officers "of higher and of lower form; some at land, others at sea; some of a military, others of a civil capacity; some judicial, others ministerial."†

The Admiral had jurisdiction of all causes of merchants and mariners, happening on the sea or in foreign parts within the king's dominions, as also of all crimes within the above limits, and of all maritime causes where the common law could give no remedy. Where the *lex terræ* does not run, other laws are allowed in many cases, and this is not contrary to Magna Charta. "If," says Coke

* "Now seeing the Admiral himself is commonly resident at land, or if at sea, not possible to be everywhere and consequently is not capable of an immediate exercise of this authority on the sea, it has been judged convenient for the entire preservation of his jurisdiction to constitute a Vice-Admiral, with captains to supply his absence; and considering the dignity and difficulty of his office, as well for the aggrandizement of the one as the ease of the other, *he constitutes his deputies for particular parts on the sea coasts*, with coroners to view the dead bodies found on sea or on the coasts." (Neale's *Sea Laws*, p. 6).

† Godolphin, *Admiral*, p. 41, A.D. 1661.

(2 Inst., p. 50), "any injury, robbery, felony, or other offence be done upon the high sea, the *lex terræ* extendeth not to it; therefore the Admiral hath cognisance thereof, and may proceed according to the marine law by imprisonment of the body, and other proceedings as have been allowed by the laws of the realm."

During the reign of Edward I., replevin was brought in the Common Pleas for the taking of a ship on the coast of Scarborough, in the sea, and for bringing the said ship from thence into the county of Norfolk. It was alleged that the coast of Scarborough was four miles long, and that it was neither a town nor a place out of which a jury could be taken; also that this court could not have cognisance of a thing done at sea. Chief Justice Berry, however, seeing that the parties were before him by due process, heard the case. "Out of which," says Coke,* "four things are to be observed.

* 4 Inst., p. 140.

1st.: That it is called *the sea*, which is not within any county from whence a jury may come. 2nd.: That the sea (not being within any county) is not within the jurisdiction of the Court of Common Pleas, but belongs to the Admiral's jurisdiction. 3rd.: That when the ship came within the river, then it is confessed to be within the county of Norfolk. Lastly: That when a taking is partly on the sea and partly in a river, the common law shall have jurisdiction."

We may observe that Coke was a determined enemy of the Admiralty jurisdiction. The admissions here made by him are, therefore, the more valuable. It would, however, have been more accurate had the last paragraph stated that "when a taking is partly on the sea and partly in a river" the common law and the civil (or Admiral's) law have a *concurrent* jurisdiction.*

* A good example of this concurrent jurisdiction may be found in the case of a coroner's inquest. When a sudden death occurs in a ship, in a navigable river, or on an arm of the sea, within a county, either the coroner of the county or the Admiralty coroner may hold the inquest, whosoever of the two is first on the spot—

In the reign of Richard II. the courts of the Admiral again encroached so much on the Common Law jurisdiction, by entertaining causes and complaints which did not appertain to the sea, or to maritime matters, that it was found necessary to

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qui prior tempore, potior jure—and a coroner of a county may under such circumstances go on board a ship of war (R., v. Solgard, 2 Str., 1095). The power of the Admiralty coroner to hold an inquest in waters within a county is declared by the Statute 15 Rich. II., c. 3 (2 Hale, P.C., 16; 8 Edw. II., *Coron.* 399), but he is limited to deaths in *great* ships, being in arms of the sea, or in rivers that flow and reflow, and being below the first bridges. When death occurs on the high seas, without the body of any country, the authority of the Admiralty coroner is unchallenged. It may be added that the Admiralty coroner is appointed by, and is the immediate deputy of, the Judge of the High Court of Admiralty (now termed Admiralty Division). This coroner has power by virtue of his appointment to take cognisance of wreck, of the death, drowning, and view of dead bodies of all whomsoever persons, in the sea, or in public rivers, ports, freshwaters, or creeks, within the flowing of the sea and high water mark in that river, and in those maritime parts of the same, for which he may be appointed. He is also charged with the custody and conservation of the Statutes concerning wreck of the sea and office of coroner made in the third and fourth years of Edward I. So late as 1854, Admiralty coroners were appointed for the coast of Hampshire, for the river Medway, for all the waters of Plymouth within the Mew Stone and Penlee Point, and for Harwich. At the present day Mr. G. H. Knight is the coroner for the Medway. The other appointments are vacant. These coroners hold their inquests according to the rules of Common Law. *Quære :* might they not do so according to the rules of Civil Law ?

restrain these courts by two Statutes: the 13 Richard II., st. i., c. 5, passed in 1389, and the 15 Richard II., c. 3, passed in 1391. The former Statute enacted, that—

"Forasmuch as a great and common clamour and complaint hath been oftentimes made before this time, and yet is, for that the Admirals and their Deputies hold their Sessions within divers places of this Realm, as well within Franchise as without accroaching to them greater Authority than belongeth to their Office, in prejudice of our Lord the King, and the common law of the realm, and diminishing of divers Franchises, and in destruction and impoverishing of the common People;

"It is accorded and assented, that the Admirals and their Deputies shall not meddle from henceforth of anything done within the Realm, but only a Thing done upon the Sea as it hath been used in the time of the noble Prince King Edward, Grandfather of our Lord the King that now is."

The other Statute was thus expressed:—

"At the great and grievous complaint of all the Commons made to our Lord the King in this present Parliament, for that the Admirals and their Deputies do encroach to them divers Jurisdictions, Franchises, and many other profits pertaining to our Lord the King and to other Lords, Cities, and Boroughs other than they were wont, or ought to have of Right, to the

great oppression and impoverishment of all the commons of the Land, and Hindrance and Loss of the King's profits, and of many other Lords, Cities, and Boroughs through the Realm; It is declared, ordained, and established That of all manner of Contracts, Pleas, and Quarrels, and of all other things done, or rising within the bodies of Counties, as well by Land as by Water, and also of Wreck of the Sea, the Admiral's Court shall have no manner of Cognizance, Power, nor Jurisdiction; but all such Manner of Contracts, Pleas, and Quarrels, and all other things rising within the Bodies of counties, as well by Land as by water, as afore, and also wreck of the sea, shall be tried, determined, discussed, and remedied by the Laws of the Land, and not before nor by the Admiral nor his Lieutenant in anywise. Nevertheless, of the Death of a man and of a Maihem done in great ships, being and hovering in the main stream of great Rivers, only beneath the Bridges of the same rivers nigh to the Sea, and in none other places of the same Rivers the admiral shall have Cognizance and also to arrest Ships in the great Flotes for the great voyages of the King and of the Realm; saving always to the King all Manner of Forfeitures and Profits thereof coming; and he shall have also Jurisdiction upon the said Flotes, during the said Voyages only; saving always to the Lords, Cities, and Boroughs, their Liberties and Franchises."*

* These Statutes are confirmed by 2 Hen. IV., c. 11, which give the party aggrieved a remedy against the Admiralty, viz.:—" That

Although these statutes restrained the Admiralty courts from holding pleas of things arising in the body of counties, yet, as Sir H. Spelman observes* it did not restrain the Admiralty from making execution† upon the land. The body of the realm, and of every county, are places *accidentally* subject to the Admiralty; therefore the Admiral "may take the body in execution upon the land; and so also may he do the goods by the opinion of the court" (Brook, *Admiral*, 19 Henry VI., 7); "and," continues Sir H. Spelman, "it is said that at that time the use was for the admiral officers to serve their citations upon the land—and great reason,

as touching a pain to be set upon the Admiral, or his Lieutenant, that the Statute and the common Law be holden against them, and that he that feeleth himself grieved against the form of the said Statute, shall have his Action by writ grounded upon the case against him that doth so pursue in the Court of Admiralty, and shall recover his double Damages against such pursuant; and such pursuant shall incur the pain of ten pounds to the King for the pursuit so made, if he be attainted."

* "Of the Admiral's Jurisdiction," p. 231.

† These statutes, says Coke (Rep. VI., 463), are to be understood of the power to hold pleas, and not of the power to award execution.

for otherwise their jurisdiction were to little purpose. Upon this reason, also, is the High Court of Admiralty, by ancient use, holden in the body of the county, and so also may the inferior courts, though the judges many times used to hold them under the full sea-mark; but discretion requires they should be in maritime towns, for the conveniency of the business and ease of the suitors. This, also, I take to be the cause that the Lord Admirals of England, in the patents to their Vice-Admirals, used to grant them that office as well in upland counties adjoining, as maritime, that they might have power to hold courts and award process thither if need require. So the Vice-Admiral of Norfolk is usually Vice-Admiral of the city of Norwich, &c."

This right mentioned by Sir H. Spelman, of holding admiral's courts in maritime towns, does not appear to have passed unchallenged. A petition of the Commons, with its answer, of the fourth year of Henry IV. (1402), directs that "the Admiral

and his lieutenants do sit to keep their courts in no liberty or town, but only upon the sea coasts or arms of the sea, and that every plea before them may be determined in one place without adjournment."*

It appears that the accustomed place in Southwark, in the beginning of the fifteenth century, to hold the Admiralty court, was a quay on the Southwark side of the River Thames; unless the court of the Admiralty was already held in a building forming part of the ancient church of St. Margaret's-on-Hill, which was destroyed as a church in the reign of Henry I., the parish of St. Margaret's being at that time united to the parish of St. Mary Overy. Stow, in his survey (A.D. 1598), says, "A part of this parish church of St. Margaret is now a court wherein the assizes and sessions be kept, and the Court of Admiralty is also there kept;" and Pepys, in his Diary (17th March, A.D. 1663), describes the Court of Admiralty as there sitting. In

* Cotton's Tower Records, p. 421.

the Rolls of Parliament (11 Henry IV., No. 61), the Commons complain of persons being summoned by the officers of the Admiral *à Loundres à la Key de William Horton, Suthwerke.**

In the reign of Henry VIII., Orton Key, near London Bridge, is mentioned in the Records of the High Court of Admiralty (3rd November, 1541), as its usual place of sitting.†

At Dover‡ (a Cinque port), a court of Admiralty, and a court of Chancery, from time out of mind, were held in the church of St. James.§

* Prynne's Animadversions, p. 82.

† Note by Sir Travers Twiss, Black Book I., p. 348.

‡ Harris's *History of Kent*, p. 473.

§ The practice of holding Courts of Justice in churches obtained in France until 1673. By an "arrest" of the Parliament of Paris, of the 28th April of that year, Judges were forbidden to administer justice in the porches of churches, or in cemeteries; such use of places, dedicated to the service of religion, being deemed profane. The *Seigneurs Hauts Justiciers* were ordered to provide proper accommodation for the administration of justice. The same "arrest" forbids justice to be administered in public houses, such practice being deemed a profanation of justice. The same remark would apply to many courts of petty sessions and to coroner's courts in our own country.

CHAPTER III.

CRIMINAL AND CIVIL PROCEDURE.

THE Admiral's Court proceeded according to the rules of Civil—not of Common—law, and took cognisance both of criminal and of civil matters: With regard to its criminal jurisdiction a Statute* was passed in 1536, which, after reciting that "traitors, pirates, thieves, robbers, murderers, and confederates upon the sea" often escaped punishment because the trial of their offences had theretofore been ordered before the admiral, his lieutenant, or commissary, according to the civil law; that

* 28 Hen. VIII., cap. 15.

the nature of this law was that, before judgment of death could be given, the offenders must either confess their offences (which they would never do without torture or pains*), or else their offences must be proved by *indifferent*, *i.e.*, impartial witnesses;† that the latter proof could rarely be obtained, because the offences were at sea, and the persons in the ship were generally murdered; that those persons who might be obtained to give testimony were commonly mariners, who had to go to sea again without delay, proceeded to enact, without changing the nature of the offences, that the same should be tried by the common law. And the trial should be—

"in such shires and places in the Realm, as shall be limited by the King's Commission or Commissions to be directed for the same, in like form and condition,

* This torture or pains is to be distinguished from *penance* or *paine fort et dure*, where the prisoner was pressed to death. It was called *fort*, for it was so heavy that he was not able to endure it, and *dure* because the offender would never have ease or relief, but would die under it.

† Stephen (Comm. 4) says that *two* witnesses were necessary; but he adduces no authority for his statement. However, be this as it may, it is certain that more exceptions to the testimony of witnesses were allowed by the Civil Law than were suffered by the

as if any such offence or offences had been committed or done in or upon the land; and such commissions shall be had under the King's Great Seal, directed to the Admiral,* or Admirals, or to his or their Lieutenant, Deputy, and Deputies, and to three or four such other substantial persons as shall be named or appointed by the Lord Chancellor of England for the time being, from time to time, and as oft as need shall require, to hear and determine such offences after the common course of the laws of this realm, used for treasons, felonies, murders, robberies, and confederacies of the same, done and committed upon the land within this realm.

"II. And be it enacted by the Authority aforesaid, That such persons to whom such Commission or Commissions shall be directed, or four of them at the least, shall have full power and authority to enquire of such offences, and of every of them, by the oaths of twelve good and lawful Inhabitants in the shire limited in their commission, in such like manner and form as if

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Common Law. It is very probable that many of the objections to the competency of a witness, mentioned in Beaumanoir's *Coutumes de Beauvoisis*, were allowed in the Admiral's court.

* There is no evidence that the Lord High Admiral ever presided in person in the judicial execution of any of these Commissions. Nevertheless, to whatever county or place the Commission issued the precepts of *venire facias* to the sheriffs or officers, as also the warrants for proclaiming the sessions, for bringing prisoners to their trials, for executing such as had sentence of death against them, &c., were in the Admiral's name, and under his seal of office, issued out of the Court of Admiralty of England.

such offences had been committed upon the Land within the same shire; and that every indictment found and presented before such commissioners, of any treasons, Felonies, Robberies, Murders, Manslaughters, or such other offences, being committed or done in or upon the seas, or in or upon any other Haven, River, or Creek shall be good and effectual in the law; and if any Person or Persons happen to be indicted for any such offence done or hereafter to be done upon the seas, or in any other place above limited, that then such order, process, judgment, and execution, shall be used, had, done, and made to and against every such person and persons so being indicted, as against Traytors, Felons, and Murderers, for Treason, Felony, Robbery, Murder or other such offences done upon the Land, as by the Laws of this Realm is accustomed; and that the Trial of such offence or offences, if it be denied by the offender or offenders, shall be had by twelve lawful men inhabited in the Shire limited within such commission, which shall be directed as is aforesaid, and no challenge or challenges to be had for the Hundred; and such as shall be convict of any such offence or offences, by verdict, confession or process, by Authority of any such Commission, shall have and suffer such pains of Death, Losses of Lands, Goods, and Chattels, as if they had been attainted and convicted of any Treasons, Felonies, Robberies, or other the said offences done upon the Land.

"III. And be it enacted by Authority aforesaid, That for Treason, Robberies, Felonies, Murders, and

Confederacies done upon the sea or seas, or in any Place above rehearsed, the offenders shall not be admitted to have the benefit of his or their Clergy, but be utterly excluded thereof and from the same, and also of the Privilege of any Sanctuary.

"IV. Provided always That this Act extend not to be prejudicial or hurtful to any Person or Persons for taking any Victual, Cables, Ropes, Anchors, or Sails, which any such person or Persons (compelled by Necessity) taketh of or in any Ship which many may conveniently spare the same, so the same Person or Persons pay out of the Hand for the same Victual, Cables, Ropes, Anchors or sails, Money or Money-worth, to the value of the thing taken, or do deliver for the same a sufficient Bill, obligatory to be paid in Form Following, that is to say, if the taking of the same things be on this side the straits of Marroke, then to be paid within four months, and if it be beyond the said straits of Marroke, then to be paid within twelve Months next ensuing the making of such Bills, and that the makers of such Bills well and truly pay the same Debt at the Day to be Limited within the said Bills.

"V. Provided always That Whensoever any such commission for the punishment of the offences aforesaid, or of any of them, shall be directed or sent to any place within the Jurisdiction of the Five Ports,*

* The five, or Cinque Ports, as we now account them, are Dover, Sandwich, Romney, Winchelsea, and Rye; and to these we may add Hythe and Hastings, which are reckoned as part or

that then every such Commission shall be directed unto the Lord Warden of the said ports for the time being, or to his deputy, and unto three or four such other

members of Cinque Ports, though by the first institution it is said that Winchelsea and Rye were added as members, and that the others were the Cinque Ports. There are also several other towns adjoining that have the privileges of the ports. These Cinque Ports had certain franchises to hold pleas, &c., and the king's writs did not run there; but by the 18 & 19 Vict., cap. 48, the jurisdiction of the Lord Warden of the Cinque Ports in civil proceedings is abolished, and all writs and judgments may be directed to be executed in the Cinque Ports in the same manner as in other parts of the realm. The jurisdiction, however, of the Lord Warden and his officers relating to salvage, and the jurisdiction of the Court of Admiralty of the Cinque Ports, and the right of the Lord Warden with respect to flotsam, jetsam, and lagon, continue. By 27 & 28 Vict., cap. 80, the Criminal Justice Act, 1855, is extended to the Cinque Ports. The constable of Dover Castle is the Lord Warden of the Cinque Ports. There were several courts within the Cinque Ports; one before the constable; others within the ports themselves, before the mayors and jurats; another, the Lord Warden's Court of Appeal from the Courts of the Cinque Ports, which was called *curia quinque portuum apud Shepway;* likewise a court of Chancery, for matters of equity. The Lord Warden's Court of Appeal has fallen into disuetude, and so are the other Courts. Commissioners sometimes act in salvage cases, and the appointment of these is the only remaining act done by the Lord Warden in his capacity of Admiral. By the 48 Geo. III., cap. 130, passed A.D. 1808, the boundaries of the jurisdiction of the Lord Warden of the Cinque Ports, in regard to any matter or thing contained in this Act, are deemed to be as follows: From a point to the westward of Seaford, in the county of Sussex, called Red Cliff, including the same, thence passing in a line one mile without the sand or shoal called the Horse of Wellingdon, and continuing the same distance without the Ridge and New Shoals, and thence in a line within five miles of Cape Crizies, on the coast of France

person or persons as the Lord Chancellor for the time being shall name and appoint; any Thing in this present Act to the contrary notwithstanding: Provided always that whensoever any Commission shall be directed unto the Five Ports for the Inquisition and Trials of any the offences expressed in this Act, that every such Inquisition and Trial to be had by virtue of such Commission, shall be made and had by the inhabitants in the said Five Ports, or the Members of the same; any Thing in this Act to the contrary thereof notwithstanding."

There can be no doubt but that commissions, under this Statute, were issued agreeably to its provisions to more than one shire, or place, at the same time. If any doubt could

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thence round the shoal called the Overfalls, two miles distant from the same; thence in a line without, and the same distance along the eastern side of the Galloper sand, until the north end thereof bears west-north-west, true bearing. From the west-north-west bearing of the Galloper, it runs in a direct line across the shoal called the Thwart Middle, till it reaches the shore underneath the Maze tower; from thence following the line of the shore up to Saint Osyth, in the county of Essex, and following the course of the shore up the River Colne to the landing place nearest Brightlingsea; from thence in a direct line to Shoe Beacon; from thence to the Point of Shellness, on the Isle of Shippey, and from thence across the waters to Faversham, and from thence following the line of coast round the North and South Forelands, and Beachy Head, till it reaches the said Red Cliff; including all the waters, creeks, and havens comprehended between them.

exist on this point, it is removed by the fact that in 1573, that is, after the passing of the Statute, the Earl of Worcester having been robbed at sea, and complaints having been made to the Privy Council that pirates were holding the narrow seas, a Queen's ship and others were sent against them. Nine hundred pirates of all nations were taken and sent in custody to Sandwich, to Dover, to the Isle of Wight, and to Portsmouth, and presumably tried at the place where sent to, for "three of them that robbed the Earl of Worcester were shortly after executed at Wight."* Had they been tried in the High Court of Admiralty in London, it would, with the tardy locomotion of those days, have been obviously absurd to bring them to London, and then to send them back to the Isle of Wight to be executed.

Commissions continued to be issued, under the Statute of 1536, at uncertain intervals until 1758, when for the more speedy bringing of offenders to justice, and to prevent the

* Holinshed's "Chronicles," IV., 322.

inconveniences occasioned by want of frequently holding a session of Admiralty for the trial of offences committed on the high seas, it was enacted by the 32 Geo. II., cap. 25, s. 20, that from and after the 1st June, 1759, a session of *oyer and terminer* and gaol delivery for the trial of such offences should be held twice at least in every year, in March and October, at the Old Bailey in London,* or in such other places in England as the Admiralty might appoint.

These commissioners were attended by the doctors of law, advocates, proctors, and others, and were preceded on entering into court by an officer carrying the commission†

* A charge to the grand jury, delivered at one of these sessions in 1674, by Sir Leoline Jenkins, will be found in Wynne's life of that eminent judge.

† The commission of oyer and terminer under the Stat. 28 Hen. VIII., cap. 15, gave power to the commissioners to try "all and singular treasons, robberies, murders, felonies, and confederacies, &c., as well in and upon the sea, or any river, port, or freshwater, creek, or place whatsoever within the flowing of the sea to the full beneath the first bridges towards the sea, as upon the shore of the sea or elsewhere within the King's maritime jurisdiction of the Admiralty of the realm of England and the dominion of the same. As well against the peace and the laws of the land as against the King's laws, statutes, and ordinances of the

for holding the Admiralty sessions, and by another officer carrying the silver oar,*

King's Court of Admiralty. And also touching all and singular other matters which concern merchants, owners, and proprietors of ships, masters, shipmen, mariners, shipwrights, fishermen, workmen, labourers, sailors, servitors, or any others."

The following is an Admiralty order for holding sessions at the New Hall in the Marshalsea Prison, in the Borough of Southwark, in 1682:—

"By the commissioners for executing the office of Lord High Admiral, &c.

"Whereas there are some prisoners in his Majesty's gaol of the Marshalseas in Southwark to be tried at the sessions of the Admiralty, These are to pray and require you (calling to you any three or more of the justices nominated in the commission of oyer and terminer for the Admiralty of England) to issue out and direct his Majesty's precepts of *venire facias* under the great seal of his Majesty's High Court of Admiralty of England in the usual form to the Sheriff of the county of Surrey for the summoning impannelling and returning of so many and such able jurors as is usual in such sessions held for the Admiralty to appear in the New Hall in the parish of St. George in the Borough of Southwark in the said County of Surrey on Saturday the 10th day of June next by seven of the clock in the morning then and there to attend the said business as also to issue out such Proclamation for giving notice of the said Sessions so to be holden as hath been in the like cases accustomed. To which time and place we desire that the said commission be accordingly adjourned. Dated at Derby House 18th day of May 1682 in the 34 year of His Majesty's reign.

"[Signed by five Commissioners.]

"To the Right Honourable Sir Leoline Jenkins Knt. Judge of the High Court of Admiralty or to Sir Thomas Exton Knt. or any other of his surrogates named in the said commission of oyer and terminer."

* The silver oar was also used at executions. The account of the execution of Capt. William Kidd (May 23rd, 1701), states that

emblematical of the jurisdiction of the Admiralty.

The powers of the Commissioners were increased by the Statute 5 Elizabeth, c. 18, to which we shall presently refer; and also by the 39 George III., c. 37* (a Statute passed in 1799). By the latter Statute, "*all and every offence and offences* which . . . shall be committed upon the high seas, out of the body of any county" are to be punished as if they were committed on shore, and are to be tried by the same persons, and in the same manner, as the "treasons, felonies, murders, and confederacies," are directed to be tried by the Statute of 1536.†

The Commissioners tried all crimes specified in the Commission, committed upon the high seas, and within the Admiralty juris-

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he and the rest of the pirates were conveyed from Newgate to Execution Dock, at Wapping, "by the officers of the Admiralty and others carrying the silver oar before them, according to the usual custom on such occasions." (Broadsheet containing account of execution of Capt. Kidd.—British Museum Library).

* By 46 Geo. III., c. 54, a similar jurisdiction is conferred on the Commissioners with reference to offences committed abroad.

† 28 Hen. VIII., cap. 15.

diction. The Commission gave power to a grand jury to examine into, and to a petty jury to try, all such offences. The form of the trial was exactly the same as the ordinary form of a trial at common law.

All offences on the high seas and other places within the jurisdiction of the Admiralty of England, may now be tried at the Central Criminal Court*, or before the ordinary judges of the land†; Commissioners, therefore, are no longer required, but should occasion demand their appointment, it is submitted that such appointment might be made. The criminal jurisdiction of the Admiralty, therefore, is now principally administered by the common law courts. Some few offences, however, remain triable by the Admiralty court alone, such as the offences of merchant vessels in wearing illegal colours, non-resistance to pirates, disrespect to Her

* 4 & 5 Will. IV., cap. 36.

† 7 Vict., cap. 2; the *venue* is laid in the county where tried.

Majesty's ships in not striking the topsail,* and desertion and disobedience of convoy.

With regard to civil jurisdiction, the court of Admiralty, following the consular courts of the Mediterranean, took cognisance, as already explained, of all maritime contracts or torts.† In consequence of the jealousy of

* In 1829, a warrant of arrest was issued against the master of the British merchant schooner, *Native*, for contempt in passing H.M.S *Semiramis*, in Cork Harbour, without striking her topsail. (R. *v.* Benson, 3 Hagg., 96 *n.*)

† The Statute, 32 Hen. VIII., cap. 14 (A.D. 1540), extends the civil jurisdiction of the Admiralty court in the following instance; it declares that, "If any merchant stranger, or other find himself aggrieved or damnified by negligent keeping of the said merchandise or wares, by long delaying or protracting of them in taking the voyage, by the said owner, his factor, master, or any the mariners of the said ship, otherwise than shall be agreed betwixt the said merchant, his factor, attorney or servant, and master or owner, in or by the said Charter Party, not being letted by wind or weather, shall and may have his remedy by way of complaint before the Lord Admiral of England for the time being, his lieutenant or deputy, against the said owner or owners, master or masters, governor or governors, or his or their factor or factors; which Lord Admiral for the time being, his lieutenant or deputy, shall and may summarily and without delay take such order and direction therein as shall be thought to his or their discretions most convenient, and according to right and justice in that behalf."

The ancient jurisdiction of the English Admiralty is well defended in an elaborate and erudite judgment of Mr. Justice Story, in *De Lovio* v. *Boit*, in the Circuit Court of the United States in 1815 (2 Gall., 399). On the other hand, Mr. Justice Johnson argued against it in *Ramsay* v. *Allegre* in 1827 (12 Wheat., 623).

the common law courts, as well as on account of the encroachments of the Admiralty, the above Statutes* were passed to restrain its power. These Statutes, however, were not interpreted by the court of Admiralty in a manner to lead to any abridgement of its jurisdiction, which it appears to have exercised it as far as possible; while on the other hand the common lawyers, by means of fictitious averments, drew many Admiralty causes into their own courts.

From very early Reports it is evident that prohibitions of the Common Law Courts against the Admiralty Jurisdiction were frequent. After many disputes between the two jurisdictions, it came to be held that the Admiralty Court had no general maritime jurisdiction, but had authority in all maritime cases where the Common Law could give no redress. Such cases were not a few.

In the reign of Queen Elizabeth, an Agree-

* 13 Rich. II., Stat. 1, cap. 5; 15 Rich. II., cap. 3; 2 Hen. IV., cap. 11.

ment* was come to between the judges of the Queen's Bench and Admiralty, by which the fictions and suggestions of the common law courts, which drew foreign bonds and contracts into the latter courts, were restrained. The Agreement is dated 7th May, 1575; but after the death of the Queen, the Common Law Courts granted many more prohibitions against the Admiralty for foreign contracts, and as the precedents in Lord Hobard's Reports, and Mr. Hughes' and Sergeant Rolle's Abridgement show us, heard the causes themselves by means of fictions of *venue*. Of this breach of good faith the Lord High Admiral and Sir Henry Martyn, then Judge of the Admiralty, made great complaint to King Charles I. and the lords of his Council; and the matters in difference between the Admiralty and the Common Law Judges were several times heard and debated at large; and at

* The text of this Agreement is to be found in Edward's *Admiralty Jurisdiction*, p. 21. It was said that this document was not published during the reign of Elizabeth. See, however Zouch, *Jurisdiction of the Admiralty Asserted*, p. 121.

length, on the 18th February, 1632, new Articles were drawn up, and resolved at the Council Board by the king himself and no less than twenty-three of his Council, and ratified by the Attorney General, by all the judges, twelve in number, as well as by the judge of the Admiralty, and entered in the Council Table Register of Causes.

The Common Law courts appear, notwithstanding these New Articles, to have endeavoured to confine the Admiralty jurisdiction to matters done exclusively upon the high seas. In 1648 the Commonwealth made an Ordinance in favour of the Admiralty Jurisdiction;* this expired at the Restoration, when in consequence of the renewed prohibitions of the Common Law Judges, the merchants petitioned the Crown for a re-observance of the rules of 1632; their petitions, however, were not regarded. A Bill was then introduced into Parliament to re-enact the provisions of the Ordinance of the Common-

* See Scobell's *Collection*, chap. 112.

wealth, but it failed to pass. From that time, questions of freight, charter parties, and of claims for the building of, or repairs, or supplies to ships, and also the investigation of questions of title to ships generally, were withdrawn from the court of Admiralty, and the jurisdiction of that Court sensibly diminished. With the one exception, of the splendid exercise of its authority in Prize cases in the early part of this century, the jurisdiction of the Admiralty Court ceased to make itself felt, save in a small degree, until 1840.*

In the reign of Queen Elizabeth, the jurisdiction of the Admiralty may be said to have been strengthened, both by the Agreement (to which we have referred), between the Judges of the Queen's Bench and the Admiralty, and also by the Statute (5 Eliz., cap. 5) passed in 1562-3, by virtue of which Statute several new matters came within the Admiralty jurisdiction. This Statute particularly

* In 1840, by 3 & 4 Vict., cap. 65, the civil power and procedure of this court was re-adjusted and re-cast.

mentions the "coasts" of the sea as being within the latter jurisdiction. The Statute in question was passed for the maintenance of the navy, deals with matters concerning the sea, such as the selling price, making restraint, or demanding toll of sea fish brought into the realm, of composition fish, of herrings, of strangers' ships, of the packing of codfish, of wines imported from France, of owners of ships and their apprentices, of the eating of fish on fish days and Wednesdays, of licenses to eat flesh, the conditions for transporting corn, and of mariners departing without the license of their captains. It then proceeds to enact (sec. 30) that:—

"All and every such of the offences before mentioned, as hereafter shall be done on the main sea or coasts of the sea, being no part of the body of any county of this Realm, and without the precinct, jurisdiction, and liberties of the Cinque Ports, and out of any Haven or Pier, shall be tried and determined before the Lord Admiral of England, or his Lieutenant, Deputy, or Deputies, and other justices of Oyer and Terminer, according to the form of the said Estatute of Anno 28, Henerici VIII., for causes of piracy; and if the same shall be done on the main sea or coasts of the sea,

within the jurisdiction or liberty of the Cinque Ports, and out of any Haven or Port, then the same to be tried and determined before the said Lord Warden of the said Cinque Ports, or his Lieutenant or judge, or before justices of Oyer and Terminer, according to the true Form of the said Estatute of Anno 28 Henerici VIII. for causes of piracy; and for all and singular such other of the offences before mentioned as shall be done in the Land or within any Haven or Pier all Justices of Peace in their Sessions, and Mayors, Sheriffs and Bayliffs, and other Head Officers in cities and towns corporate, in their Sessions or other courts within the limits of their Commissions or Authorities, shall have full power and Authority to enquire of the offenders of this Act, as well by the Oaths of twelve Men, as otherwise by Information, and thereupon to hear and determine the same."

The jurisdiction of the Admiralty is also expressly protected by a Statute passed in the reign of Philip and Mary, being the 1 & 2 Philip and Mary, cap. 5—an Act to restrain carrying of corn, victuals, and wood over the seas. It provides that:

"This Act, nor anything therein contained, shall not be prejudicial or hurtful unto the Lord Great Admiral of England for the time being, or to the King and Queen's Majesties' jurisdiction of the Admiralty, but

that the said Lord Admiral or his deputy or deputies may and shall exercise use and execute all kind of jurisdiction belonging to the sea according to his or their commissions as they might lawfully have done heretofore."

CHAPTER IV.

THE APPOINTMENT OF VICE-ADMIRALS.

THE power of the Admiral to appoint deputies or vice-admirals, which we have already adverted to, appears to have been exercised without any intermission to the present day. The sea coasts of England and Wales were divided into nineteen circuits, or vice-admiralties—viz., 1. Northumberland, Durham, and York; 2. Lincoln; 3. Norfolk; 4. Suffolk; 5. Essex; 6. Kent; 7. Sussex; 8. Southampton; 9. Dorset; 10. Devon; 11. South Cornwall; 12. North Cornwall; 13. Somerset; 14. Gloucester; 15. South Wales; 16. North Wales; 17. Chester; 18. Lancaster; 19. Westmoreland and Cumberland.

"Every Lord Admiral," says Sir W. Monson,* "substitutes his deputy or vice-admiral in every maritime shire in England, except in such places where the lords of manors challenge a right formerly granted by the kings of England, as will appear by their grants. These vice-admirals are carefully to look that all things be performed that are ordained by the Lord Admiral, and yearly to keep a court in their several counties where every man's complaint may be publicly heard."

The following appointment of a Vice-Admiral for the Isle of Wight in 1765, scarcely varies, in the smallest particular, from other Patents of older or more modern date. The Patent was always written in Latin until the reign of George II.:

Letters Patent granted to Hans Stanley Esquire for the office of Vice-Admiral in the Isle of Wight.

* Sir W. Monson, *Naval Tracts*, Book III., p. 1 (A.D. 1732).

GEORGE THE 3RD by the grace of God of Great Britain France and Ireland, King, defender of the Faith; to Our right trusty and well beloved Hans Stanley Esquire

GREETING, We, confiding very much in your fidelity, care, and circumspection in this behalf, do by these presents, which are to continue during Our pleasure only, ordain, constitute, and depute you the said Hans Stanley Our Vice-Admiral, Commissary, and Deputy in the Office of Vice-Admiralty in *Our Isle of Wight and Maritime parts thereof and to the same adjoining* (in the Room of Thomas Lord Holmes deceased) whatsoever; with power of taking and receiving all and every the fees, profits, advantages, emoluments, commodities, and appurtenances whatsoever due and belonging to the said Office of Vice-Admiral, Commissary, and Deputy in *our said Isle of Wight and Maritime parts thereof and to the same adjoining*, according to the Ordinances and Statutes of the High Court of our Admiralty of England: And We do hereby commit and grant unto you Our power and authority in and throughout *our whole Isle of Wight and Maritime parts of the same and thereto adjacent* and also throughout all and every the Sea Shores and Public Streams, Ports, Freshwaters, Rivers, Creeks, and Arms as well of the Sea as of the Rivers and Coasts whatsoever to our said *Isle of Wight and Maritime parts thereof and thereto adjoining*, as well within Liberties and Franchises as without, to take cognizance of and proceed in all Causes, Civil and Maritime, and in Complaints, Contracts,

Offences, or suspected Offences, Crimes, Pleas, Debts, Exchanges, Accounts, Charter-parties, Agreements, Suits, Trespasses, Injuries, Extortions, and Demands, and Businesses, Civil and Maritime, whatsoever, commenced or to be commenced between Merchants, or between Owners and proprietors of Ships and other Vessels and Merchants, or others whomsoever, with such owners and proprietors of ships and all other vessels whatsoever employed or used within the Maritime jurisdiction of our Admiralty of England, or between any other persons whomsoever had, made, begun, or contracted for any Matter, Cause or thing or Business or injury whatsoever done or to be done, as well in upon or by the Sea or public streams or freshwaters, ports, rivers, or Creeks, and places overflowed whatsoever within the ebbing and flowing of the Sea and to high water mark as upon all shores or banks to them or any of them adjacent from all first bridges towards the sea throughout England and Ireland or the dominion of the same or elsewhere in all parts beyond the Sea with all and singular their incidents, emergencies, dependencies, annexed and connexed Causes whatsoever, wheresoever, or howsoever, and such Causes, Complaints, Contracts, and other the premises abovesaid, or any of them, which may happen to arise, be contracted, had, or done, in *our said Isle of Wight and maritime parts of the same and thereto adjoining*, to hear and determine according to the Civil and Maritime laws and the customs of the

High Court of our Admiralty of England. AND MOREOVER, in all and singular Complaints, Contracts, Agreements, Causes, and Businesses, Civil and Maritime, to be performed beyond the sea or contracted there, or to be completed, or ended in this our Kingdom of Great Britain or in our said Kingdom of Ireland or in any other dominion of the same howsoever arising or happening, and also in all and singular other causes and Matters which in any manner whatsoever touch or any way concern or anciently have and do or ought to belong unto the Maritime jurisdiction of Our Admiralty of England aforesaid in ***our said Isle of Wight and Maritime parts thereof and to the same adjacent***, whatsoever and generally in all and singular other causes, Suits, Crimes, Offences, Excesses, Injuries, Complaints, Misdemeanors, or suspected Misdemeanors, Trespasses, Regratings, Forestallings, and Maritime businesses whatsoever throughout the Places aforesaid within the Maritime Jurisdiction of Our Admiralty aforesaid by sea or water or the Banks or shores of the same howsoever done, committed, perpetrated, or arising. And also to enquire by the Oaths of honest and lawful men of ***our Isle of Wight aforesaid and maritime parts thereof and to the same adjacent*** whatsoever, dwelling both within Liberties and Franchises and without as well of all and singular such matters and things which of right, and by the statutes, ordinances, and customs of our High Court of Admiralty aforesaid anciently observed, were wont and ought to be inquired after as of Wreck of the Sea, and

of all and singular the Goods and Chattels of whatsoever Traitors, Pirates, Manslayers, and Felons howsoever offending within the Maritime Jurisdiction of our Admiralty of England aforesaid and of the goods, Debts, and Chattels of all and singular their Maintainers, Accessories, counsellors, Abettors or Assistants whomsoever, and also of the Goods, Debts, and Chattels of whatsoever person or persons, Felons of themselves, by what means or howsoever coming to their Death within Our aforesaid Maritime Jurisdiction, wheresoever any such Goods, Debts, and Chattels, or any parcel thereof, by Sea, Water, or Land, in *our Isle of Wight aforesaid and Maritime parts of the same thereto adjoining* whatsoever, as well within Liberties and Franchises as without, have been or shall be found forfeited or to be forfeited or in being. And also of the goods, Debts and Chattels of whatsoever other Traitors, Felons, and Manslayers found or happening to be found within our maritime jurisdiction aforesaid, and moreover as well of the goods, Debts, and Chattels of whatsoever other traitors, felons, and manslayers wheresoever offending and of the goods, debts, and chattels of their maintainers, Accessories, Counsellors, Abettors, or Assistants, as of the goods, debts, and chattels of all fugitives, persons convicted, attainted, condemned, outlawed, or howsoever put or to be put in exigent, for treason, felony, manslaughter, or murder, or any other offence or crime whatsoever, and also concerning goods waiving,

Flotzon, Jetzon, Lagon, Shares and Treasures found or to be found, Deodands, and of the goods of all others whomsoever taken or to be taken as derelict or by chance found or to be found or howsoever, due or to be due, and of all other casualties, as well in, upon, or by the Sea, and the shores, Creeks, or coasts thereof or Maritime parts, as in, upon, or by all Freshwaters, Ports, Public streams, Rivers, or Creeks, or places overflowed whatsoever within the ebbing and flowing of the Sea or High water mark or upon the shores or banks of any of the same from all first bridges towards the sea howsoever, wheresoever, or by what means soever arising, happening, or proceeding, or wheresoever such goods, debts, and chattels, or other the premises, or any parcel thereof, may or shall happen to be met with or found within our Maritime Jurisdiction aforesaid: and also concerning Anchorage, Lastage and ballast of ships, and of Fishes Royal, namely, Sturgeons, Whales, Porpusses, Dolphins, Riggs, and Grampusses, and generally of all other Fishes whatsoever, which are of a great or very large bulk or fatness, anciently by right or custom or any way appertaining or belonging to Us in our said office of our Admiralty of England aforesaid. And to ask, require, levy, take, collect, receive and obtain, and to the use of us, and the office of our High Admiral of Great Britain aforesaid for the time being, to keep and preserve the said Wreck of the Sea, and the goods, debts, and chattels, and all

and singular other the premises, together with all and all manner of Fines, Mulcts, Issues, Forfeitures, Amercements, Ransoms, and recognizances whatsoever, forfeited or to be forfeited, and pecuniary Punishments for Trespasses, Crimes, Injuries, Extortions, Contempts, and other Misdemeanors whatsoever, howsoever imposed or inflicted, or to be imposed or inflicted, for any matter, cause, or thing whatsoever, in *Our Isle of Wight aforesaid and maritime parts of the same, and thereto adjacent* whatsoever in any court of Our Admiralty of England there held or to be held, presented or to be presented, assessed, brought, forfeited, or adjudged, and also all Amercements, Issues, Fines, Perquisites, Mulcts, and pecuniary Punishments whatsoever, and forfeitures of all manner of Recognizances, before us or our Lieutenant, Vice-Admiral, Deputy, or Deputies, and other our justices, or of our heirs or successors of our Admiralty of England aforesaid, or four of them assigned or to be assigned by Letters Patent, or Commission from us and our heirs or successors, according to the Statutes thereupon made and the customs of the High Court of Our Admiralty of England aforesaid made and to be made under the Great Seal of our kingdom of Great Britain for the hearing and determining in *our Isle of Wight aforesaid and maritime parts of the same and thereto adjacent* all and singular treasons, felonies, robberies, murders, manslaughters, confederacies, and other offences, trespasses, con-

tempts, misprisions, spoils, and misdemeanors committed or to be committed, happening, or imposed, or to be imposed or inflicted, or by any means assessed, presented, forfeited, or adjudged, within our maritime jurisdiction aforesaid, or howsoever by reason of the premises, due or to be due, in that behalf, to us or our heirs or successors. ***And further***, to take all manner of Recognizances, Cautions, Obligations, and Stipulations, as well to our use as at the instance of any parties, for Agreements, or debts and other causes whatsoever, and to put the same in execution, and to cause and command them to be executed; and also to arrest, and cause and command to be arrested, according to the said civil and Maritime Laws and ancient Customs of Our said Court, all Persons, Ships, Things, Goods, Wares, and Merchandizes, for the premises and every of them, and for all other causes whatsoever concerning the same, wheresoever they shall be met with or found throughout ***our Isle of Wight aforesaid and maritime parts of the same and thereto adjoining*** as well within Liberties and Franchises as without; and likewise for all other Agreements, Causes, or Debts, howsoever contracted or arising, so that the Goods or persons of the Debtors may be found within our Maritime jurisdiction aforesaid, and to hear, examine, discuss, and finally determine the same, with their emergencies, dependencies, incidents, annexed and connexed, causes, and businesses whatsoever, together with all other

causes, civil and Maritime, and complaints, contracts, and all and every the respective premises whatsoever, above expressed, according to the Laws and customs aforesaid, and by all other lawful ways, means, and methods, according to the best of your skill and knowledge; and to compel all manner of persons in that behalf, as the case shall require, to appear and to answer, with power of using any temporal coercion and of inflicting any other penalty or mulct, according to the Laws and customs aforesaid, and to do and minister justice according to the Right order, and course of the Law, summarily and plainly, looking only into the truth of the fact, and to fine, correct, punish, chastise, and reform and imprison, and cause and command to be imprisoned, in any Gaols, being within *our Isle of Wight aforesaid and maritime parts thereto and to the same adjacent* the Parties guilty, and the contemnors of the Law and jurisdiction of our Admiralty of England aforesaid, and Violaters, Usurpers, Delinquents, and contumacious Absenters, Masters of Ships, Mariners, Rowers, Fishermen, Shipwrights, and other workmen and artificers whatsoever, exercising any kind of maritime affairs, as well according to the said Civil and Maritime Laws, Ordinances, and Customs aforesaid and their demerits as according to the statutes or ordinances of us and of our Kingdom of Great Britain for the Admiralty of England in that behalf made and provided; and to deliver and absolutely discharge, and cause

and command to be discharged, whatsoever persons imprisoned in such cases, who are to be delivered; and to preserve and cause to be preserved, the public Streams, Ports, Rivers, Freshwaters, and Creeks whatsoever within our maritime jurisdiction aforesaid, in what place soever they be in *Our Isle of Wight aforesaid and maritime parts thereto and to the same adjacent* whatsoever, as well for the preservation of our Navy Royal, and of the Fleets and Vessels of our Kingdoms and Dominions aforesaid, as of whatsoever Fishes increasing in the Rivers and places aforesaid; and also to keep and cause to be executed and kept in *Our said Isle of Wight aforesaid and maritime parts thereto and to the same adjacent* whatsoever, all the ordinances and statutes of our Kingdom of Great Britain for the Admiralty of England in that behalf made and provided, and to do, exercise, expedite, and execute all and singular other things in the premises, and every of them, as they by right, and according to the Laws and Statutes, Ordinances and customs aforesaid, should be done. And Moreover, to reform Nets too close, and other unlawful Engines or Instruments whatsoever, for the catching of Fishes wheresoever, by sea, or Public Streams, Ports, Rivers, Freshwaters, or Creeks whatsoever throughout *our Isle of Wight aforesaid and maritime parts thereto and to the same adjacent* used or exercised by water within Our jurisdiction aforesaid wheresoever, and to punish and correct the

exercisers and occupiers thereof according to the said statutes or ordinances of our kingdom of Great Britain for the Admiralty of England aforesaid to the contrary made and provided; and to pronounce, promulge, and interpose all manner of sentences and Decrees, and to put the same in execution, with Cognizance and jurisdiction of whatsoever other Causes, Civil and Maritime, which relate to the Sea, or which in any manner of ways respect or concern the Sea, or passage over the same, or Naval or Maritime voyages, or our Maritime Jurisdiction abovesaid or the Places or limits of our said Admiralty and Cognizance afore mentioned, and all other things, done or to be done; with power also to proceed in the same according to the said Civil and Maritime laws and ancient Customs of our aforesaid Court, as well of mere office, mixed or promoted, as at the instance of any party, as the case shall require and seem convenient. And likewise with Cognizance and Decision of wreck of the Sea, great or small, and of the Death, drowning, and view of dead bodies of all persons, howsoever killed, or drowned or murdered, or which shall happen to be killed, drowned, or murdered, or by any other means come to their Death, in the Sea or Public Streams, Ports, Freshwaters, or creeks, whatsoever within the flowing of the Sea and Highwater Mark throughout *our Isle of Wight aforesaid and maritime parts thereto and to the same adjacent* or elsewhere within our maritime jurisdiction aforesaid, together

also with the keeping and preserving of our Statutes concerning wreck of the sea and the office of coroner in the 3rd and 4th years of Edward the 1st, and of the Statutes concerning goods robbed or perished in the sea and which shall come into the kingdom of England, in the 27th year of Edward 3rd, our progenitors sometimes Kings of England respectively made and provided. And likewise with the cognizance of Mayhem in the aforesaid places within our maritime jurisdiction aforesaid, and flowing of the sea and water there happening, with power also of punishing all delinquents in that kind according to the exigencies of the law and customs of our said court. And to do, exercise, expedite, and execute all and singular other things which in and about the premises only shall be necessary or thought meet, according to the Laws Civil and Maritime and the Statutes and ordinances aforesaid, and the style manner and custom of the High court of our Admiralty of England aforesaid, with power of deputing and surrogating in your place for the premises one or more Deputy or deputies as often as you shall think fit, and also with power from time to time of naming, appointing, ordaining, assigning, making, and constituting whatsoever other necessary fit and convenient officers and ministers under you (the judge, register and marshal excepted) for the said office, and execution thereof, in *our Isle of Wight aforesaid and maritime parts thereto and to the same adjacent*

whatsoever. Saving always the Right of the High court of our Admiralty aforesaid and also of the Judge and Registrar of the said Court, from whom or either of whom it is not our intention in anything to derogate by these presents; and saving to every one who shall be wronged or aggrieved by any Definitive Sentence or Interlocutory Decree which shall be given in the Vice-Admiralty Court of *the Isle of Wight aforesaid* the right of appealing to our aforesaid High court of Admiralty of England. Provided nevertheless, and under this express condition that if you the foresaid *Hans Stanley* shall not yearly, (to wit,) at the end of every year between the feasts of saint Michael the Archangel and All Saints, duly certify and cause to be effectually certified to us and Our Lieutenant, official principal, and Commissary general and special, and judge and president of the High court of our Admiralty of England aforesaid, all that which from time to time by virtue of these presents you shall do, execute, collect, or receive in the premises or any of them, together with your full and faithful account thereupon to be made in an authentic form, and sealed with the seal of our office remaining in your custody, that from thence, and after default therein, these our Letters Patent of the office of Vice-admiral aforesaid to you as above granted, shall be null and void and of no force or effect: Further, We do in Our name command all and singular Our Governors,

Justices, Mayors, Sheriffs, Captains, Marshals, Bailiffs, Keepers of all our Gaols and prisons, Constables, and all other our officers and faithful and liege subjects whomsoever, and every of them as well within liberties and Franchises as without, that in and about the execution of the premises and every of them they be aiding, favouring, assisting, submissive, and yield obedience in all things, as is fitting unto you, and to your Deputy whomsoever, and to all other officers (by you appointed or to be appointed) of Our said Vice-Admiralty in *our Isle of Wight aforesaid and maritime parts thereto and thereto adjoining* under pain of the Law and the peril which will fall thereon. Given at London, in the High court of Our Admiralty of England aforesaid, under the Great Seal thereof, the 8th day of January in the year of our Lord One thousand seven hundred and sixty-five, and of our reign, the 5th.

A Vice-Admiral is constituted or appointed by Letters Patent of the Sovereign, given in the High Court of Admiralty of England, under the Great Seal. The candidate for the office of Vice-Admiral having previously requested the Commissioners for executing the office of Lord High Admiral to permit him to hold the place, the Commissioners, if they think fit so to do, direct their warrant

to the judge of the High Court of Admiralty, requiring him to cause the said Letters Patent to issue. The following is the form of the warrant of the Commissioners in 1689, causing Letters Patent to issue for the appointment of Sir Jonathan Trelawney to the Vice-Admiralty of the South parts of Cornwall:—

By the Commissioners for executing the office of Lord High Admiral, &c.

Whereas request is made unto Us by Sir Jonathan Trelawney, Bart., that he may hold the place of Vice-Admiral of the South parts of Cornwall which we have thought fit (according to the power given to us by their Majestys' Commission under the Great Seal of England) to grant. These are therefore to pray and require you to cause Letters Patent of the Vice-Admiralty of the South parts of the County of Cornwall aforesaid to be issued out of the High Court of Admiralty, in their Majestys' name to the said Sir Jonathan Trelawney, to continue during their Majestys' pleasure in as large and ample manner as the same was granted unto him the said Sir Jonathan Trelawney* or any others, with power to

* In general the warrant here names the predecessor. In the present instance the office of Sir J. Trelawney, as well as of all other Vice-Admirals, had determined by the abdication of the king (James II), and it was necessary to re-appoint them all to serve under the new Sovereigns (William and Mary).

ordain and appoint his deputies and under officers (the Judge Register and Marshal only excepted), and with proviso that just accounts be made every year and in default the said Letters Patent to cease and determine. For which this shall be your warrant. Dated at the Admiralty Office this 20th July 1689.

J. L.
J. C.
J. L.
By &c. P. Bowles.

To Sir Charles Hodges, Knt., Judge of the
High Court of Admiralty.

The office of Vice-Admiral only continues during the good pleasure of the Crown—*durante bene placito*—and we find an instance of the revocation of the commission of a Vice-Admiral, in the case of Sir Robert Holms, Knt., Vice-Admiral of the County of Southampton and Isle of Wight; concerning whom there is an order of the Commissioners addressed to Sir Charles Hodges, Knt., Judge of the High Court of Admiralty, in 1692, requiring him to revoke the Vice-Admiral's commission.

The death of the Lord High Admiral did not affect the appointments of the Vice-Admirals.*

The following is a list of Vice-Admirals appointed in 1684:—

Bristol, the Mayor for the time being.

Cheshire and *Lancashire*, William George Richard Earl of Derby.

North parts of Cornwall, Sir J. Molesworth.

South parts of Cornwall, Sir Jonathan Trelawney.

Devon and *city of Exeter*, Sir E. Seymour.

Dorset and *city of Poole*, Lord Ashby.

Essex, Sir J. Bramston.

Gloucestershire, Thomas Chester, Esq.

Hampshire and *Isle of Wight*, Sir R. Holms.

Kent, Earl of Winchelsea.

Lincolnshire, the Right Honble. George Lord Viscount Castleton.

Norfolk, void by death of Lord Viscount Yarmouth.

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* A writ was awarded out of the Court of Admiralty against Sir Thomas Bacon and Sir Thomas Heyden to shew cause (whereas the Earl of Lincoln, late High Admiral of England, had granted to them by Letters Patent to be Vice-Admirals in the counties of Norfolk and Suffolk) why the said Letters Patents ought not to be repealed and annulled. And now it was made by Coke, that although the Admiral had but an estate for life, yet the Patents did continue in force after his death. (Leonard's Rep., part 2., p. 103.)

Northumberland, *Cumberland*, *Westmoreland*, *bishoprick of Durham*, and *town of Newcastle-upon-Tyne*, void by death of Earl of Carlisle.

Somerset, Sir Thomas Bridges.

Suffolk, Major Thomas Allin.

Sussex, Sir J. Pelham.

North Wales, Lord Viscount Bulkley.

South Wales, Sir Edward Mansell.

York, Earl of Mulgrave.

Isles of Guernsey and *dependencies*, Sir Henry Devie.

Appointed by their Majesties, William III. and Mary II., in 1689:—

Devon and the *city and county of Exeter*, George Courtney, Esq.

North Wales, Sir W. Williams, Bart.

South parts of Cornwall, Sir Jonathan Trelawney.

Kent, the Right Honble. Heneage Earl of Winchelsea.

South Wales, the Right Honble. Earl of Carbery.

North parts of Cornwall, Sir John Molesworth.

Northumberland, *bishoprick of Durham*, and *town and county of Newcastle-upon-Tyne*, the Right Honble. Richard Lord Viscount Lumley.

Dorset and *town and county of Poole*, the Right Honble. Anthony Earl of Shaftesbury.

Appointed in 1690.

Somerset, and *city and county of Bristol*, Sir Edward Phillips.

Hants and *Isle of Wight*, Sir Robert Holms, Knt.
Gloucestershire, Sir John Guise.
Essex, Edward Cary, Esq.
Suffolk, Sir Thomas Allin, Bart.
Cheshire and *city and county of Chester* and the *county of Lancaster*, the Right Honble. Charles Lord Brandon.
Norfolk, Sir Henry Hobard, Bart.

Appointed in 1692.

Cumberland and *Westmoreland*, Sir John Lowther, Bart.
Essex, William Beaw, Esq.
York and *city and county of York*, the Right Honble. the Lord Erwin.
Lincolnshire, the Right Honble. George Lord Viscount Castleton.

Appointed in 1854:—

Sussex, his Grace the Duke of Richmond, K.G.
Devon, the Right Honble. Hugh Earl Fortescue, K.G.
Cornwall, the Right Honble. Ernest Augustus Earl of Mount Edgcumbe.
Somerset, his Grace the Duke of Somerset, K.G.
Pembrokeshire, Sir John Owen, Bart.
Yorkshire, the Right Honble. Albert Lord Londesborough, K.C.H.
Lincolnshire, the Right Honble. Charles Earl of Yarborough.
Suffolk, the Right Honble. John Earl of Stradbroke.
Essex, the Right Honble. Henry Viscount Maynard.

Every Vice-Admiral is empowered, by the Letters Patent constituting him, to appoint his own officers for carrying out the duties of the Vice-Admiralty; but while possessed of these powers every constitution or appointment of a Vice-Admiral, for England or Ireland, contains an exception withdrawing from him the power of appointment of the judge, register, and marshal of his Vice-Admiralty. These officers always appear to have been constituted by Letters Patent* in

* The Letters Patent of the Vice-Admiralty Judge contain (inter alia) these provisions:—" And also with power to sit and hold courts in any cities, towns, and places in the county of —— aforesaid, for the hearing and determining of all such causes and businesses, together with all and singular their incidents, emergencies, and dependencies, annexed and connexed causes whatsoever, and to proceed judicially and according to law in administering justice therein, and moreover to compel witnesses in case they withdraw themselves for interest, fear, favor and ill will, or any other cause whatsoever, to give evidence to the truth in all and every cause above mentioned, according to the exigencies of the law. And further to take all manner of recognisances, cautions, obligations, and stipulations, as well to our use as at the instance of any parties for agreements and debts and other causes and businesses whatsoever, and to put the same in execution, and to cause and command them to be executed. Also duly to search and enquire of and concerning all goods of traitors, pirates, &c., and concerning the bodies of persons coming to their death in the sea,

the same manner as the Vice-Admirals themselves. Thus Timothy Baldwin, Doctor of Civil Law, was constituted by Letters Patent Judge for the Vice-Admiralty of the county of Cheshire and city and county of Chester in 1660; George Wilson, Gentleman, was similarly appointed to the place of register, or registrar, of the same, in the same year; Edward Masters, Doctor of Civil Law, was in the same manner constituted Judge for the Vice-Admiralty of the county of Devon and city and county of Exeter in 1690; Edward Hales, of Newport, in the Isle of Wight, was similarly appointed to the place of register, or registrar, of the Vice-Admiralty of Hampshire and the Isle of Wight in the same year; and Christopher Ungles, of West Cowes, in the Isle of Wight, was appointed in the same manner to the place of marshal of the Vice-

and also concerning mayhems and all other trespasses, misdemeanours, offences, enormities, and maritime crimes whatsoever done and committed upon the high sea and ports, &c., of the Admiralty."—Literæ Patentes to William Dawes, Esqre., for the office of Judge in the Court of Vice-Admiral, in the county of Kent, 27th July, 1728.

Admiralty of Hampshire and the Isle of Wight in the same year. These examples are sufficient, but many more could be adduced.*

* The assistant to the Marshal was termed "under marshal" or "sergeant."

In 1660, Michael Crake, Gentleman, was appointed Water Bailiff for the Diocese of Durham, and for the offices of Beaconage, Anchorage, and Ferriage for the River Wyer (Wear) below the bridges.

In 1660, a lease was granted by the Lord High Admiral to James Halsall and others, of lastage and ballastage of all ships entering any port within England and Wales, except the Thames, at the rent of £400 per annum. This lease included the right to them of certain seaweeds, and of all metals and minerals between high and low water marks.

The author is indebted to Mr. J. G. Smith, M.A., Assistant Registrar of the Admiralty Division, for the following note:—"*Ferriage* is the sole right of keeping Ferryboats for all ferries below bridges, across rivers and arms of the sea; and the grantee receives the accustomed dues to his own use."

CHAPTER V.

JURISDICTION OF THE VICE-ADMIRAL.

HAVING shown how Vice-Admirals of counties were appointed, what were their duties, and who were their officers, it is interesting to be able to give some information concerning their courts.

The port of London was immediately under the High Court of Admiralty. But each maritime shire, or group of shires, had its own Vice-Admiral, who had power to hold sessions once a year, or oftener if occasion required, and to call before him, or his judge, all seafaring men and mariners living within his district or division. He might then and there enroll all their names and places of

abode, taking account likewise of all ships within his jurisdiction. As we have explained above, the jurisdiction, both civil and criminal, of the Admiralty Court has been by degrees curtailed, and the Civil Jurisdiction was in 1840 recast; while all jurisdiction which it formerly exercised in the Government of the Royal Navy was abolished by the Statutes 13 Car. II., St. 1, c. 9, and 22 Geo. II., c. 33.

It is a matter of great difficulty to determine, with accuracy, what amount of jurisdiction is possessed by Vice-Admirals at the present day. In 1863 the form of the Patent of Appointment (given at p. 51) was altered, by order of the Lords Commissioners of the Admiralty, through a desire on their part to avoid all conflict with modern Statutes, which had from time to time incidentally raised obstacles in the way of Vice-Admiralty jurisdiction.

The new form of Patent is very short; it merely grants to a Vice-Admiral whatever jurisdiction "is now usually exercised by a Vice-Admiral." It also contains certain

saving clauses, and among others, those in restraint of any grant of right to wreck, or to fees, or to perquisites. But it must not be forgotten that this abstention from authority of the Admiralty may at any time be relaxed. Among the Statutes which are antagonistic to the Vice-Admiral should be mentioned the Merchant Shipping Act, 1854 (17 & 18 Vict. 104), by which the Board of Trade is to superintend all matters relating to wreck, and to appoint receivers of wreck. By section 440, "No Admiral, Vice-Admiral, or other person under whatever denomination, exercising Admiralty jurisdiction, shall interfere with any wreck," except (by s. 454) in case where any Vice-Admiral or Lord of the Manor is entitled *for his own use** to unclaimed

* The Statute then points out under what conditions such right shall be exercised. In many manors, and places on the coast, wreck cast upon land was in early times granted by the Crown to Lords of Manors; and it is still claimed as such in places. It is also claimed by prescription in some Manors. Wrecks belong to the Crown on the principle of restraint of piracy and peculation. The old law of wreck which held the existence of some living creature necessary to the claim of restitution was rejected by the Court of Session of Scotland in the beginning of the last century

wreck, found in any district for which a receiver is appointed.

Before this Statute the practice of the Vice-Admiral was to maintain some officer to seize all derelict goods; these were afterwards sold by public auction, and the proceeds, after deducting costs for the salvage, the labour of landing, the wharfage, and the care, were transmitted to the Admiralty in London.

The Statutes 3 & 4 Will. IV., c. 41, and 6 & 7 Vict., c. 38, which direct appeals to be made to the Privy Council instead of to the High Court of Admiralty, might perhaps be held to include appeals from Courts of Vice-Admirals of the United Kingdom.

Lastly, by the 3 & 4 Vict., c. 65 (1840), the

(1725), in the case of *Montier* v. *Agnew;* and half a century afterwards was, on an admirable argument of Lord Mansfield, in the case of *Hamilton* v. *Davis* (5 Burr., 2732), banished from English jurisprudence. It may be considered as completely superseded by modern Statutes. In the particular instances abovementioned, there is so far a departure from the common rule of wreck, that the person who succeeds in saving the property is entitled not merely to retain it for payment of salvage, but to the entire property. This with a view to saving of human life prevails as the custom in the North Seas.

practice of the High Court of Admiralty being improved and assimilated to that of the Common Law Courts, a Vice-Admiral would be bound to consider the new "customs of our High Court of Admiralty of England," in his adjudications; this would create a new, but not an insuperable, difficulty.

Those who were appointed Vice-Admirals prior to 1863 are, subject to the Statute Law, possessed of all the ancient jurisdiction.

The only Vice-Admirals at present in office for England or Wales are Lord Mostyn, for North Wales and the county of Carmarthen, the Earl of Kimberley, for the county of Norfolk, and Lord Hothfield for the counties of Cumberland and Westmoreland. We shall refer to the Vice-Admirals of Scotland and of Ireland in another place.

The authority given to Vice-Admirals by their Patents of Appointment enabled, or assumed to enable, them to hold "Common Courts" and "Courts of Enquiry." The former were held by them from day to day, and from time to time, as occasion required.

In such Courts the Vice-Admirals (or their Judges) gave remedy between man and man; that is to say Justice Commutative. Their duties in the "Common Courts" appear to have been :—

1st. To take cognizance in all causes Civil and Maritime, and in all complaints, &c., Civil and Maritime, between (*a*) merchants,* (*b*) between owners of Ships and merchants, (*c*) between other persons with the owners of ships employed within the Admiralty of England, or (*d*) between any other persons, concerning any matter done or to be done upon the Sea or public streams, ports, and places overflowed within the ebbing and flowing of the Sea and High water mark, and upon the adjacent shores from all first bridges towards the sea throughout England and Ireland, and in all parts beyond the Sea. But the complaint must arise

* It is a very interesting fact that so late as 1614, Peter Dalia, a citizen, and John Gourin, burgess and merchant of Bordeaux, John Bolthon, and William Rostlinc, English merchants, obtained the nomination of certain new officers named "Juges Conservateurs des Francais et Anglais," appointed to decide and judge the disputes and differences between the subjects of France and England, in consequence of a certain convention made 24th February, 1606, between the King of France, Henry the Great, and James the First, King of Great Britain. But upon the representation made to the Parliament of Bordeaux the matter was stayed, because it was not shown that similar officers were appointed in London and in other English towns.

within the Vice-Admiralty. They are to hear and determine the complaint according to the Civil and Maritime laws and the customs of the Admiralty.

2nd. To hear and determine in a similar manner all Contracts, Civil and Maritime, to be performed beyond the Sea, or contracted there or to be completed in Great Britain or Ireland or in their dominions, and all causes which in any manner concern the maritime jurisdiction of the Admiralty within the vice-admiralty.

3rd. To hear and determine in a similar manner all causes, offences, and maritime business arising within the maritime jurisdiction of the Admiralty.

The "Courts of Enquiry" were those unto which all the seafaring men of the shire were required to come, to hear the Articles and things given in charge, in order that they might not be ignorant of the Laws whereby they were governed. These general assemblies were held twice a year; probably at Michaelmas and after Easter. The Vice-Admirals (or their Judges) dealt in these Courts with matters touching the Commonwealth, enquired of crimes and of nuisances, and reformed them. This Court may be said to have been for the administering of Justice Distributive. It was not ordained for any

particular or private matters between party and party; for such things the former Court was appointed. In Courts of Enquiry the Vice-Admirals were required:—

1st. To enquire by the oaths of honest men of the Vice-admiralty* (*a*) of all matters which of right, and by the statutes, ordinances, and customs of the High Court of Admiralty were wont to be enquired after; (*b*) of wreck of the sea, (*c*) of goods of Traitors, Pirates, Manslayers, and Felons, offending within the Jurisdiction of the Admiralty of England and goods of their Accessories; (*d*) of goods of persons *felo de se* coming to their death within the jurisdiction of the Admiralty of England. All goods &c., before mentioned being found, either by water or land, within the Vice-Admiralty.

2nd. To enquire in a similar manner (*a*) of the goods of all other Traitors or Felons found within the Admiralty of England, or (*b*) wheresoever else offending; (*c*) of the goods, of their accessories, (*d*) of the goods of all persons outlawed or put in exigent, for any offence; (*e*) of Flotzon, Jetzon, Lagon, treasures found, Deodands and other goods derelict or found; (*f*)

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* Although the number of this jury is not prescribed in the Commission, a perusal of some records of the Vice-Admiralty Court for Cheshire and Lancashire show us that the minimum number is *twelve*, but it was often increased by two, five, or more jurymen.

of all casualties. The above goods, &c., being found in or by the sea, or in Freshwaters, Ports, or places overflowed within the ebbing and flowing of the sea, or upon the shores of the same from all first bridges towards the sea within the maritime jurisdiction of the Admiralty of England.

3rd. To enquire in a similar manner of (*a*) Anchorage, Lastage and Ballast of ships; (*b*) of Royal fish, and which belong to the sovereign in the office of Admiralty of England.

By his Patent of appointment, each Vice-Admiral further appears to have had authority to exercise the following executive jurisdiction:—

1st. To collect to the use of the sovereign and of the Admiralty of Great Britain (*a*) all Wreck of the sea, and all the goods, &c., above-mentioned; (*b*) all Fines and pecuniary Punishments for Crimes and misdemeanors imposed in any Court of the Vice-Admiralty; (*c*) all fines and pecuniary Punishments imposed by the Commissioners* appointed for the hearing and determining in the Vice-Admiralty of all treasons, felonies, &c.

2nd. (*a*) To take recognizances, &c., both to the use of the sovereign and at the instance of any parties, and to cause them to be executed; (*b*) to arrest, within

* These Commissioners are appointed by virtue of the 28 Hen. VIII., ch. 15.

the Vice-Admiralty, according to the civil and maritime laws and ancient customs of the Admiralty court, all persons, ships, and goods necessary for effecting the above purpose; (*c*) to arrest in the same manner, for the purpose of executing all agreements or debts, howsoever arising, so that the goods or persons of the Debtors may be found within the Admiralty of England; (*d*) to hear and determine the above matters; (*e*) and all other causes, civil and maritime.

It is further laid down in each Patent that:—

The Vice-Admiral should determine all the above matters according to the civil and maritime laws and customs, and he may compel witnesses to appear before him. He has the power of using any temporal coercion, and of inflicting any penalty according to the above laws and customs. He is to administer justice summarily* and plainly, looking only into the truth of

* Marine causes were heard without delay, and the court sat every day, without other adjournment, "from tide to tide," until the cause was concluded. In cases of necessity, such as might be caused by provisions, or by an obligation to sail, or *si periculum sit in mora*, the judge must hear the cause even on a Sunday or feast-day; *cap: licet de feriis apud Gregorium.* And Palladius says: "*Necessitas feriis caret,*" *lib.* 1. *de re rustica, cap.* 6, 1 *secunda D. feriis et l. omnes judices. C. eodem et ibi Mornae.* The same rules apply to the trial of piracies and other crimes committed at sea; *L. Provinciarum; C. feriis.* The French Marine Ordinances of 1543, Art. 6, and of 1584, Art. 14, are to the same effect.

the fact. He may fine and may imprison,* in any gaol within the Vice-Admiralty, all guilty parties and "contemnors of the jurisdiction of the Admiralty,"† and contumacious Absenters, Mariners, and Workmen exercising any kind of Maritime affairs. In fining and imprisoning he may follow the Civil and Maritime Laws, as well as the Statutes, of Great Britain. He has power to discharge all prisoners who are to be discharged.

The Vice-Admiral is (*a*) to preserve the public Streams, Ports, &c., within the Vice-Admiralty, both on account of the vessels of the kingdom as of the fish; (*b*) to keep in the Vice-Admiralty all the ordinances and statutes of Great Britain in that behalf, and (*c*) to execute all things hereinbefore mentioned.

He is (*a*) to reform Nets too close for the catching of fish throughout the Vice-Admiralty; (*b*) to punish the exercisers of such nets according to the statutes or ordinances of Great Britain; (*c*) to promulgate Decrees, and to put the same in execution;

* Richard Bourn was imprisoned at Dover by the Lord Warden of the Cinque Ports, because he took an anchor and cable as wreck in the liberty of the rape of Hastings, which the Lord Warden alleged to be within the Cinque Ports, and to appertain to him, because he had the jurisdiction of the admiralty there. The man was imprisoned for over twenty-three weeks. *Bourn's Case*, Cro. Jac., p. 543 (1619).

† This term would include a person who sued for a marine matter in a common law court. *Per contra* in *Ball* v. *Trelawny* (Croke, Ch. I., p. 603), a defendant was sued for having brought an action in the Admiral's Court in respect of a contract made on land.

(*d*) to have cognizance of all other causes, civil and maritime, relating to the sea, or concerning the passage over the same, with power to proceed concerning them according to the civil and maritime laws, as well "of mere office,* mixed or promoted,"† as at "the instance‡ of any party."

To have cognizance (*a*) of wreck, and (*b*) of the Death and view of dead bodies in the sea or creeks within the flowing of the sea and High water mark throughout the Vice-Admiralty; (*c*) to have the keeping of the Statute concerning wreck of the sea and office of coroner (3 & 4 Edw. I., chap. 4), and of the Statute concerning goods robbed or lost at sea, and which come into the kingdom (27 Edw. III., chap. 13); (*d*) to have the cognizance of mayhem happening in the places above mentioned, and to punish the perpetrators according to the Law and customs of the Admiralty.

The Vice-Admiral has the power of deputing and surrogating one or more deputies to act for him. He may also appoint other necessary officers and ministers (the Judge, Registrar, and Marshal excepted), for the Vice-Admiralty.

It clearly appears that a jury was summoned to each Court of Enquiry, who made a presentment, or information, of all offences

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* Mere office, *i.e.*, inquisition. † Office promoted, *i.e.*, accusation.

‡ Hence the expression, "*instance court.*"

enquirable in the Vice-Admiralty court. The presentment probably was much the same as that made in a Sheriff's Tourn. The following curious document* is evidently a charge to a jury about to make such a presentment, and was delivered by the Vice-Admiralty Judge of the county of Sussex in 1638. From the internal evidence it would appear that no Vice-Admiralty sessions had been held in that county for twelve years.

Articles of enquiry to be administered concerning the Admiralty in the county of Sussex, 1638.

Imprimis. You shall truly present without respect of persons all such as have any time within these twelve years last profaned the Sundays in going out to take fish by themselves or their servants.

2. Item You shall present all pirates robbers murderers felons and thieves that have committed any piracy robbery murder or felony upon the high seas or within any freshwater haven river or creek from all bridges next unto the sea within full sea mark or on the seasands within the jurisdiction of the Admiralty in the County of Sussex against any

* In the British Museum Library.

of the King's Majesty's subjects or any other his friends and allies and of their receivers councellors aiders or abetters procurers comforters or maintainers either by words victuals ships boats artillery weapon gun powder or any other thing and the receivers of their spoils and buyers of pirates' goods.

3. Item Ye shall enquire and true presentment make of all petty pickers petty felons and private thieves that breaketh any cofers fardels packes dry-fats chests or other like upon board any ship or other vessel or that stealeth oars anchors apparel tackle of any ship or boat or any fisherman's nets hooks pots fish or other things.

4. Item Ye shall enquire and true presentment make of all those that have taken any ships vessels goods or prisoners upon the sea or elsewhere for any matter done upon the sea, or any other river freshwater or creek within the King's Majesty's jurisdiction of His Highness' said Admiralty in the County of Sussex and have not presented the same in this Court accordingly.

5. Item Ye shall truly enquire and true presentment make of the slaughter of men done and made by any ship vessel or boat or any apparel of them and of all dead bodies found that have come to their deaths upon the sea or in any other haven river freshwater or creek within the jurisdiction of the Admiralty aforesaid which have not been presented in this Court (as it appertaineth) or that have had any gold silver jewels or other

things found upon them and the like presentment hath not been made thereof.

6. Item Ye shall inquire and true presentment make of all riots unlawful assemblies contempts concealments routs trespasses frays outcries bloodsheds maims quarrels menacings or threatenings weapons drawing or any other act crime or trespass done and committed against the King's peace and laws of this realm upon the sea or upon any other haven port place river freshwater or creek within full sea mark or on the sea sands or elsewhere from the first bridge next unto the sea within the jurisdiction of the Admiralty in the County of Sussex in any ship vessel or boat or upon the seasands within the foresaid jurisdiction and true presentment make of the offenders their names and dwelling places.

7. Item Ye shall enquire and true presentment make of all them that have laden or do use to lade any goods or merchandise either upon the high sea or in any haven freshwater river or creek within the jurisdiction of the Admiralty in the County of Sussex in or upon any strange bottom either within this realm or without where they might have had English ships to serve them according to the laws of the Realm.

8. Item Ye shall enquire and true presentment make of all them that have shipped or laden any ship vessel or boat lying upon the high sea or in any other haven freshwater river or creek from the first bridge next unto the sea within the jurisdic-

tion of the Admiralty in the County of Sussex with wheat rye barley oats malt or any other grain and have transported the same beyond the seas contrary to the laws of this realm and ye shall truly declare the names of the merchants owners and masters of such corn and ships with the names of the same ships.

9. Item Ye shall truly present all them that have laden shipped delivered carried sold or conveyed any wheat rye barley beans malt or any other corn tallow leather brass lead candles cheese butter or other victuals in any ship vessel or boat out of the realm into any other realms from any freshwater river creek or place within the jurisdiction of the Admiralty in the aforesaid County of Sussex contrary to the laws and customs of this realm whereby his Majesty hath been deceived and not paid his just customs and subsidy and the commonwealth hurted.

10. Item Ye shall truly enquire and true presentment make of all them that either by day or night lade any ships or vessels in secret creeks or places (being no common or open port) or that do help to convey and lead strangers ships into any such private creek or place whereby the secret landing places on the sea coast may be known to strangers.

11. Item Ye shall present all fishmongers and all other persons that be forestallers or regratters or keepers of markets upon the water or the shores within the jurisdiction of the Admiralty in the

County of Sussex whereby the commonwealth and the markets be abused (that is to say) all them that forestall regrate and buy any manner of goods merchandise or victuals upon the water or shores as aforesaid before it come to the place or port where it is to be discharged and sold.

12. Item Ye shall enquire and truly present all that cut or let slip any buoy or buoy rope whereby any anchor is lost, or cut any cable or any tackling of ship vessel or boat in any haven river or port from all bridges next into the sea within the jurisdiction of the Admiralty in the County of Sussex whereby the ship or vessel driveth or otherwise is in peril of hurt taking or any man thereby in peril of life.

13. Item Ye shall enquire of all that send unlawful anchors cable or tacklings in any ship or other vessel to the sea whereby the same might stand in danger to be cast away and the mariners in peril of their lives.

14. Item Ye shall enquire and truly present all manner of unlawful nets or other engines used by fishermen wherewith any manner or kind of fish or fry of fish is destroyed to the hurt of the Commonwealth.

15. Item Ye shall enquire and truly present all those that have dragged any oysters or mussels or put them to sale at unseasonable time (that is to say) at times prohibited by the laws and customs of the Admiralty all those that do any hurt or annoyance to the beds and brood of oysters and

mussels, and also those that have taken in severed and ingrossed any oyster plots or beds for their private profit.

16. Item Ye shall enquire and present all them that have carried any gold or silver bullion or plate in any ship into any other realm.

17. Item Ye shall enquire and present all them that have found any ship vessel or boat washing on the high seas or in any freshwater river or creek within the jurisdiction of the Admiralty in the County of Sussex without owner and have not presented the same to this Court.

18. Item Ye shall enquire and truly present all those that have found upon the sea or any other river haven freshwater or creek or elsewhere by the seaside within the jurisdiction of the Admiralty in the County of Sussex any flotson, as ton pipe oil wine bale trusts masts sails yards timber or any other manner of thing whatsoever it were and have not presented the same and them that such things possess.

19. Item Ye shall enquire and truly present all men that have found in the bottom of the sea or in any other haven freshwater river or creek within the foresaid jurisdiction any lagon as anchors guns iron steel tin lead or other metal or things gold or silver and have not justly presented the same to this court.

20. Item Ye shall enquire and duly present all them that have maintained upon the high stream of any ports havens or creeks within the

foresaid jurisdiction any mills wears kiddles and stakes or other things to the annoyance of the Navy of this realm or hurt of any channel or stream or that casteth any ballast or other things into the same.

21. Item Ye shall enquire of them that have taken any fish royal or other fish accustomed to the King's Majesty and the office of his High Admiralty of England (that is to say) whales ballens sturgeons grampuses dolphin porpoise or any fish that is of great growth or taken or reputed for a fish royal and have not presented (as it appertaineth accordingly).

22. Item Ye shall diligently inquire and true presentment make of all such mariners sailors fishermen and all other watermen which have at any time before this absented and withdrawn themselves from any of his Majesty's presses or at any other time from the service for the realm to serve in his Highness's Navy and have become retained servants with any man for that time or have received press money and so have gone their ways: name all such persons.

23. Item Ye shall present all idle mariners sailors wherrymen tilt-boatmen fishermen and bargemen that use any loitering playing at dice and cards and haunt alehouses and taverns with idle company and do not continually follow and give themselves to their occupations nor are content to serve in covenant for any reasonable wages: all such you shall by name specify and declare.

24. Item Ye shall present all those persons that have made any frays or drawn any blood in or upon any ship vessel barge boat or elsewhere within full seamark (within the foresaid jurisdiction of the Admiralty) or in anywise breaketh the King's peace and be common pickers of quarrels: name all such with their dwelling places.

25. Item Ye shall present all those persons which have thrown any dung chalk rubbish or noisome thing into the sea or any sea passage to the hurt of the same within the foresaid jurisdiction: name the offenders therein.

26. Item Ye shall present all those that have cast any anchor into the sea or river without a buoy or mark upon the same whereby danger hath or might ensue to any ship vessel barge boat or man's body.

27. Item Ye shall present all handicraftsmen and other persons that have used and exercised this year past or at any time before any nets or other engines to take oysters or other fish and have not been apprentice to the craft of fishing.

28. Item Ye shall present all those that take any to service in the craft or science of fishing but for term of years whereby they may have their present knowledge and learning in the water craft and trade of fishing.

29. Item Ye shall present all those that have vexed troubled arrested or imprisoned any mariner seaman fisherman or other persons for any contract

bargain trespass hurt or other thing done upon the sea in any haven fresh water, river or creek within the jurisdiction of the King's Majesty's said Court of the Admiralty in the County of Sussex in any other court or place in contempt of the King's jurisdiction of his Admiralty aforesaid: enquire diligently for this and specify their names surnames and dwelling places.

30. Item Ye shall enquire diligently and make true presentment of all such customs orders and usages as have formerly been observed in the townships villages and places in which you now severally dwell touching the taking of cockles and all those that have broken any of the said customs or orders within these twelve years last past.

31. Item Ye shall present all those that have privately sold at the water side or elsewhere or carried to market in bags or that selleth abroad in the countries any small brood or fry of fish not marketable, or that have taken any fish before the accustomed time of taking thereof; to the great destruction of the increase of the fish: name the offenders in this point.

32. Item Ye shall diligently enquire and truly present whether any kiddles stanks stakes or wears have been or be newly erected built used and occupied in any creek port haven or other place unto the same adjoining within the King's jurisdiction of the Admiralty in the County of Sussex aforesaid: whereof let true presentment be made declaring in what places and by whom the same

were or are so builded made or used; how many there be in number; who be their owners and what kind of young fry of fish they do commonly use to destroy; and when the time is to begin to fish and to leave off by ancient custom.

33. Item Ye shall present the mesh of the unlawful nets and other unlawful engines used and occupied in the said kiddles and wears.

34. Item Ye shall present all other ancient customs orders and usages used and frequented in fishing trade amongst the old fishermen of the townships villages and places in which you do now generally dwell as well of the times and seasons accustomed to fish the names and assizes of your nets as what kind and sort of fish are commonly taken by your labour from time to time.

35. Item You shall enquire diligently and make true presentment of all such fishermen as have taken sold or brought to market in the high sea or in any haven freshwater river or creek within the King's jurisdiction of his Admiralty within the county of Sussex below the lowest bridges next to the sea any bass mullets soles plaice flounders turbots or other fish of a less assize or scantling than by your ancient customs usages or the law is allowed.

36. Item You shall present all podders that come to secret places on the sea coast and there regrate the fish whereby the common markets are defrauded.

37. Item You shall present all fishermen that

do sell their fish at such secret places of the sea coasts where no private markets ought to be.

38. Item You shall present all cable-hangers that is to say tailors shoemakers or handicraftsmen being not brought up in mariners science that do go or send any of their servants to the sea whereby mariners and fishermen or their science should in anywise decay or be hindered.

39. Item You shall present all seamen that do send any young men or lads either to fishing or sailing in any vessel or boat except there be a sufficient number of able men therein to guide the same without peril of drowning or casting away for lack of government.

40. Item You shall present all nuisances committed or done upon the sea shore or upon the shore of any haven or creek below high water mark whereby the shore is anyway impaired or annoyed or the liberty of the passage hindered.

41. Item You shall present all other annoyances crimes evil facts disorders or hurts which are in anywise prejudicial or hurtful as well to poor fishermen's and seafaring men's lives or to the commonwealth or navy of this realm.

42. Of these and all other offences hurts and annoyances used committed or done in any respect upon the sea or in any river or creek belonging to the same within the jurisdiction of his Majesty's Admiralty in the County of Sussex for the space of twelve years last past you are diligently to enquire

and true presentment make upon the oaths of every of you and the same to give up in writing under your hands.

The Committee of the Lords and Commons, in 1635, ordered the following :—

That every Vice-Admiral being not learned nor expert in knowledge for the due exercising of that office, shall provide and appoint one discreet and learned man in the Civil Laws, dwelling or resorting within the Circuit of his office; or for want of a Civilian, one learned in Common Laws of the Realm dwelling within the same Circuit that may be conveniently gotten to be his deputy, as well as to keep Sessions and Courts as also to proceed in matters of justice from time to time at the orders of the Law and of the said office required.

They also ordered that every Vice-Admiral do procure a commission for Commissioners to proceed in matters of piracy and similar offences, and that he procure a new commission to himself of Oyer and Terminer. This was for the purpose of trying offenders at Common law under the Statute of 1536 (28 Hen. VIII., c. 15).

It was further ordered :—

That every Vice-Admiral shall take order that a

general Court of Enquiry for the office of Vice-Admiral, according to the tenor of his Commission, be every half year kept throughout every shire, within the limits of his Commission at such convenient time and place as the seamen, mariners, fishermen, and every other person and persons, having to do with these Courts, may easily and with least travel appear and give their attendance.

Much light is thrown on the subject by the protocols entered in the book of the registrar of the Vice-Admiralty Court for the counties of Chester and Lancaster.* The protocols are various brief notes taken officially by a notary public, acting as registrar of that Vice-Admiralty in 1635. They are written partly in Latin and partly in English. The document begins thus :—

"Curia Admiralitatis per comitatus Cestrie et Lancastrie et pertinentium maritimarum earum dominii tenta apud aedes Johannis Tilston scitutas in vico vulgariter nuncupato the Eastgate Streete infra civitatem Cestrie, coram venerabili viro Mattheo Anderton in legibus barristerio, Commissario sive Judice Admiralitatis predicte per comitatus predictas,

* This MS. is in the Record Office in London.

nono die mensis Octobris Anno Domini 1635, presente me Nicholao Ratcliffe notario publico ejusdem curiæ registrario, &c."*

"Quibus die et loco infra præconizationem uti moris est, et evocatis Henerico Darwell et Johanni Low, constabulariis Parochiæ Beatæ Mariæ super Montem Civitatis Cestrie comparuerunt, et introduxerunt mandatum seu warrantum eis directum, una cum catalogo per eos sumenitorum et designatorum, fecerunt fidem."

"Ac die et loco predictis infra præconizationem uti moris est, et evocato Johanne Johnson Individuæ Trinitatis Civitatis Cestrie constabulario, non comparuit, nec warrantum ei directum misit, in contemptum hujus Curiæ. Unde, facta prius fide, per Johannem Tilston hujus Curiæ marescallum quod warrantum ab hac Curia fuit eidem Johanni Johnson deliveratum, et per marescallum predictum monito ad exequendum, et introducendum warrantum predictum hoc die et loco predicto, mulctatus est ad summam quadragintorum solidorum."

* This is hardly grammatical; probably some word is wanting. We think that the following is the correct translation according to the evident sense:—A Court of Admiralty for the counties of Chester and Lancaster and maritime parts of their dominion held at the house of John Tilston situated in the street commonly called Eastgate Street within the city of Chester before the venerable man Matthew Anderton, barrister-at-law Commissary or Judge of the Admiralty aforesaid for the said counties on the 9th day of the month of October A.D. 1635 in the presence of me Nicholas Ratcliffe, notary public, registrar of the said court, &c.

The explanation to the above is this. The Constable of every parish, within the county or hundred for which the Court was holden, was directed by the Marshal of the Court to make a return of the defaults, justiciable by the Court, which had been committed within the constable's parish. This enabled the Judge to inform the Jury of what things they were to present. The Constables of St. Mary on the Hill (Chester) appear to have obeyed this order. But the Constable of the parish of the Undivided Trinity (in the same city) appears to have disobeyed the order, and to have been fined 40 shillings.

There are records in similar terms of the holding, during the same year and before the same judge, of Vice-Admiralty Courts in the Town Hall of Liverpool for the county of Lancaster; in the Town Hall of Preston for the hundreds of Loynsdall and Furniss; at the house of John Tilston in Chester for Derby; in the Town Hall of Preston for the county of Lancaster; in the same for the

county of Lancaster and hundreds of Loynsdall and Furniss; at the house of John Tilston in Chester for Lancaster; and in the following year (A.D. 1636) and before the same judge, in the Town Hall of Lancaster for Chester and Lancaster; in the Town Hall of Preston for the same; in the Common Hall of Pleas in the castle of Chester for the hundred of Worrell in the county of Chester; in the same place for the hundreds of Buckley and Eddesburie in the county of Chester; in the Town Hall of Preston for Chester and the county of Lancaster; in the Town Hall of Liverpool for the same; and in the house of Nicholas Ratcliffe, in Chester, for the counties of Chester and Lancaster. It is quite possible that protocols of Admiralty Courts held in other maritime counties may still exist. Be that as it may, it is sufficiently demonstrated by the above notes that Matthew Anderton, barrister-at-law, was a Judge of Vice-Admiralty for the counties of Chester and Lancaster, and held his Court of Enquiry from time to time in various parts of

the said counties; this practice was in perfect conformity with the power conveyed to him, and to other judges of Vice-Admiralty, by their Patents of Appointment, and was followed by other Vice-Admiralty Judges in the other maritime counties.

Continuing our perusal of the notes of Nicholas Ratcliffe, we find that presentments were made by a jury of at least twelve (although it was often of a larger number of men), "coram venerabili viro Mattheo Anderton, decimo die mensis Novembris, Anno Domini 1635."

The protocols are as follows:—

"Officium Domini merum* contrà Thomam Formeby. Presented by the said jury for cutting Richard Blevin his cable. Quo die Dominus mulctavit eum ad summam 13/4.

"Idem contrà Robertum Melling, Willielmum Rymmer, Rodulphum Hall, Edwardum Martinn, Thomam Plum, Richardum Higginson, et Thomam Parr. Presented by the said jury for driving carts

* Compare this with the Commission "to proceed according to the civil and maritime laws as well *of mere office* mixed or promoted, as at *the instance* of any party."

over cables. Quo die Dominus mulctavit quemlibet eorum ad summam 5*l*.

"Idem contrà Richardum Dwarrihouse, water bayliff of Liverpool. Presented for suffering ballast and lime stones to be cast in the port thereof to the annoyance of shipping. Et Dominus mulctavit eum ad summam 20*l*.

"Idem contrà Johannem Smith de Liverpool. Presented for a quarrel. Et Dominus mulctavit eum ad summam 40*l*.

"Idem contrà Jacobum Low. Presented for laying his anchor without a buoy. Et Dominus mulctavit eum ad summam 10*l*.

"Idem contrà magistrum Ashton de Penkett et Dominum Richardum Brookes de Norton. Presented by the said jury for either of them having an unlawful weirs or fishyard. Quo die Dominus mulctavit eorum utrumque ad summam 40*l*.

"Idem contrà Willielmum Stevenson et Henericum Brookes de Halebancke. Presented by the said jury for keeping and fishing with unlawful nets and fish-yards. Quo die Dominus mulctavit eorum utrumque ad summam 20*l*.

"Idem contrà Lawrentium Formeby for suing and imprisoning of John Williamson sailor in another court than this Court of Admiralty. Et Dominus mulctavit eum ad summam 20*l*.

"Idem contrà Robertum Bond de Toxteth Park for destroying the brood of small fish. Et Dominus mulctavit eum ad summam 13/4.

"Idem contrà Franciscum Pickering de Hale-

bancke for hindering the accustomed passages of ships into Ditton Pool, for quarrelling with and offering to kill mariners, for causing men to pay 2/6 for anchorage at the same pool contrary to all former customs, and for putting of ships and other vessels in danger. Et Dominus mulctavit eum ad summam 40/.

"Idem contrà Jacobum Williamson de Alverston who was drowned with a watch in his pocket in October last upon Connsant sands. Quo die Dominus decrevit inquisitionem faciendum et commissionem, &c."

Here this interesting record of the past stops. But it is sufficient for its purpose. It affords us unimpeachable information concerning the Courts of Enquiry of the Vice-Admirals of the Coast held in the person of their judges. "The mode of trial in the Admiralty Court," said Lord Mansfield, "is regulated by the Civil Law *et per consuetudines marinas*, grounded on the Law of Nations, which may possibly give to that court a jurisdiction which our Common Law is not able to invest." (Rex *v.* Depardo, 1 Taunt. R. 29).

A notary public always acted as registrar in the Vice-Admiralty Courts. The Marshal

or the Serjeant executed the warrants and precepts of the Vice-Admiral.

"In the twenty-eighth year of Queen Elizabeth," says Chief Justice Coke, "Butler and others upon the sea, next to the town of Laystoft in Suffolk, robbed divers of the Queen's subjects and spoiled them of their goods, which goods they brought into Norfolk; and there they were apprehended, and there brought before me, then a justice of the peace within the same county, whom I examined. . . . . And I was of opinion that in that case it could not be felony punishable by the Common Law, because that the original act, viz., the taking of them was not any offence whereof the Common Law taketh knowledge. . . . . And yet, notwithstanding, I committed them to the gaol until the coming of the Justices of Assizes. And at the next assizes the opinion of Wray, Chief Justice, and Periam, Justice of Assize, was that forasmuch as the Common Law doth not take notice of the original offences, the bringing of the goods stolen upon the sea into a county did

not make the same punishable at Common Law. And thereupon they were committed to Sir Robert Southwell, then Vice-Admiral of the said counties.*

This is an excellent illustration of the limits of the Common Law and of the Admiralty jurisdiction. The Vice-Admiral of the counties of Suffolk and Norfolk, however, could only have detained the prisoners in some gaol until the next Commission for trying of offences upon the sea, was held in those counties. Before the Statute of 28 Henry VIII., cap. 15, the Lord High Admiral might have tried the prisoners according to the Civil Law; and before the Ordinance of Edward I. (mentioned in the Black Book of the Admiralty, p. 49) the Vice-Admiral might have tried them himself. But all that he could do, at the date we are now considering, was to detain the prisoners in gaol. Doubtless they might have been presented at the Vice-Admiralty Court of the

* Coke R. vi, 464.

county; but the Vice-Admiral would have had to await the Commissioners for the trial (and punishment if guilty) of the prisoners. The Vice-Admiral, however, would have been one of the Commissioners, would have given the rule of court, and would have pronounced the sentences on all the prisoners who were convicted.*

Some Admiralty records afford evidence of other duties—that is, purely ministerial duties—of Vice-Admirals. A warrant from the

* "The Character you give of Dr. Briggs," writes Sir Leoline Jenkins, "is a very true one, and nothing more than he really deserves; yet in regard of his being a Clergyman in the order of priesthood, and a beneficed man, I cannot say but that is an objection to his being a *judge* in a Vice-Admiralty; not that I am of opinion in the least that his Holy orders do unqualifie him, if he be called to such Temporal Business, but that in this case it will be his duty and his place, if a Commission of Oyer and terminer should come to be executed in his Vice-Admiralty, to give the Rule of Court, and to pronounce even in capital cases, and cases of blood; which a Clergyman, I think, ought not to do as the Law now stands; it is true, any one in the same commission may give the Rule, but it is incumbent on him (as judge) to do it. I must confess I did deliver my opinion to this effect, in the case of my worthy friend Sir John Trelawney for the same reason; but the late Commissioners of the Admiralty, nevertheless, thought fit to make him Vice-Admiral in his Father's room; and it is under correction, and in perfect submission that I now mention this scruple of mine" Wynne's "Life of Sir Leoline Jenkins."

Lords Commissioners, dated the 26th February, 1689, addressed to the Vice-Admiral of the county of Dorset (the Earl of Shaftesbury), requiring him to impress within his jurisdiction in the county of Dorset and town and county of Poole, as well within liberties as without, three hundred able mariners, and to send them to Portsmouth, there to be put on board such of their Majesties' ships as should be appointed to receive them. The warrant requires all Mayors, Sheriffs, Justices of the Peace, Bailiffs, Constables, Headboroughs, "and all other their Majesties' officers and loving subjects whom it may concern" to assist the Vice-Admiral in this behalf.

On the same date similar warrants were directed to the Vice-Admiral of the county of Sussex (Sir John Pettsham, Bart.), requiring him to send two hundred seamen to Portsmouth; to the Vice-Admiral of the North Parts of Cornwall (Sir John Molesworth, Bart.), requiring him to send fifty seamen to Plymouth; to the Vice-Admiral

of the South Parts of Cornwall (the Right Revd. Father in God, Jonathan, Lord Bishop of Exeter), requiring him to send one hundred and fifty seamen to Plymouth; and to the Vice-Admiral of Devon and city and county of Exeter (George Courtney, Esqre.), requiring him to send seven hundred seamen to Plymouth. An order from the Lords Commissioners in 1690, addressed to Sir J. Trelawney, Bart., Vice-Admiral of the South Parts of Cornwall, directs him to cause an embargo to be laid on all ships, within any port or harbour within his Vice-Admiralty, except coasters and ships in their Majesties' service, or for which bond should be given to go direct to Ireland or the Northern parts of Europe, and to return to England direct from thence.

Similar orders were given to the Vice-Admirals of South Wales, Sussex, North parts of Cornwall, Dorset and town and county of Poole, Somerset and city and county of Bristol, North Wales, county of Southampton and the Isle of Wight, Devon,

and Kent. The Vice-Admiral of the last-mentioned county is directed to lay an embargo on a ship in Dover Harbour. This is worthy of note, because Dover, being a Cinque Port, was within the exclusive jurisdiction of the Lord Warden of the Cinque Ports.

In the like manner the Vice-Admirals executed the orders of the Lords Commissioners when it was deemed fit to take off an embargo. An order, dated 2nd May, 1691, from the Lords Commissioners, directs the Vice-Admiral of the county of Gloucester (Sir John Guise) to take off the embargo on ships within his Vice-Admiralty, *on bond being given* on behalf of the ships *to the officers of Custom* that the ships would not trade in certain ports. It would have appeared to be a more natural sequence had this bond been given to the Vice-Admiral, instead of to the officers of Customs, since the Vice-Admiral had full power, by virtue of his commission, "to take all manner of recognizances, cautions, obligations, and stipulations," as well to the

use of the Crown, as at the instance of any parties. Probably, however, it was considered more convenient that the officers of Customs should take cognizance of what was evidently a fiscal matter, and perhaps the growing power and jealousy of the Common Law preferred to quench, wherever practicable, the Civil Law, by relegating to officers, free from that jurisprudence, the conduct of such matters.

Several instances may be found in which the two jurisdictions have clashed together. Thus two years earlier, a British ship, bound for Cork, in Ireland, with wine and brandy, the property of merchants at Bordeaux, was cast away near Padstow in Cornwall. A great part of the goods were saved by Mr. Leach, the Deputy of the Vice-Admiral (Sir John Molesworth), and placed by him in a warehouse. Thereupon one Rollins, pretending that the owners owed him £30 for freight, petitioned the Commissioners of Customs, and obtained an order from them to the Customs officers to carry the goods

into the King's warehouse, paid the duty, and appointed a day for the sale of the goods. Of this the Vice-Admiral complained to the Lords Commissioners, urging that by this act he had "had no satisfaction for salvage, or warehouse room." The Lords Commissioners sent his complaint to Sir Charles Hodges, Judge of the High Court of Admiralty, enquiring whether the act of the Customs was any invasion or not of the jurisdiction of the Admiralty. The answer of Sir Charles Hodges is not known.

Again, about the same date, the bishop of Exeter, Vice-Admiral of the south parts of Cornwall, seized a ship at Mount Bay, bound for Ireland. The ship was manned with Frenchmen, and was under the commission of the French King. A dispute arose between the Vice-Admiral and the Customs officers who claimed a right to the ship. In this case also we do not learn how the dispute ended.

Again, in 1691, a ship bound for France was seized by two private men-of-war on suspicion; a [tide ?] waiter was put on board,

and a Commission issued out of the Court of Admiralty to examine witnesses in order to prove the case. In the meanwhile some officers of the Vice-Admiral of the county of Southampton (Sir Robert Holmes, Knt.), imprisoned the waiter, and hindered the execution of the Commission. The Lords Commissioners ordered the Vice-Admiral to inquire into the matter and to give them an account of the same, which, it appears, was not to their satisfaction, for a subsequent order from the Lords Commissioners directs the Vice-Admiral to deliver the ship and lading to Richard Carter, Esqre., Rear-Admiral of the Blue, in order to be carried into Portsmouth; and the Commission of this Vice-Admiral was revoked in the following year.*

* It had been Ordered by a Committee of the Lords and Commons in 1635, that "If any prize happen to come within the Vice-Admiralty taken by any commission out of the High Court of Admiralty, by virtue of an Ordinance of Parliament, that you make stay of all such prizes until they shall be adjudged in the High Court of Admiralty, and the tenths and customs of all such prizes, so taken, first paid or compounded for." It is very probable that an order similar to the above was in force at this time.

In 1709, a ship with French goods came into the port of Penzance and was there seized by the Admiral's officers as a perquisite of the Admiralty. A custom house officer afterwards seized the ship, as forfeited, under the French Prohibition Act. It was held that the ship was forfeited by the Act of Parliament upon coming into the port, and that the seizure afterwards by the Admiralty officers did not prevent the forfeiture.*

The Statute 1 & 2 George IV., cap. 75 (A.D. 1821), particularly enacted that it should be the duty of the Vice-Admiral of a county to transmit to Trinity House a report of wreck of the sea, and of goods found jetsam, flotsam, or lagan, under certain circumstances.

S. 26. "No Lord or Lady of any Manor, or other Person, who may be entitled to or claim to be entitled to wreck of the sea, or to any Goods found jetsam, flotsam, or lagan, shall be entitled to appropriate such Wreck or Goods to his, her, or their own use, or otherwise to dispose thereof, until he,

* See Parker's Reports, p. 273, and Attorney General v. Norstedt, 3. Price R., p. 97.

she, or they have caused a Report thereof in Writing to be given to the Deputy Vice-Admiral of that part of the coast where the same shall have been stranded, wrecked, or found, or to his agent; or if there shall be no such Deputy Vice-Admiral or Agent residing within the distance of Fifty Miles, then to the Corporation of the Trinity House of Deptford Strond; which report shall contain an accurate and particular description of the Wreck or Goods found, and of the place or places and time or times where and when the same may have been found, and of any marks that may be thereon, and of such other particulars as may the better enable the Owner or Owners thereof to recover the same, and also of the place or places where the same are deposited and may be found and examined by any person claiming any Right to such wreck or goods, nor until the full Expiration of a year and a day after the delivery of such notice any thing in any law to the contrary notwithstanding; and the Deputy Vice-Admiral or Agent aforesaid shall, within Forty-eight Hours after receiving such report as aforesaid, transmit a copy thereof to the secretary of the Corporation of the Trinity House of Deptford Strond, upon pain of forfeiting for any neglect to transmit such account as aforesaid, the Sum of Fifty Pounds to any person who will sue for the same."

It also appears that abuses occasionally prevailed among the Vice-Admirals. We have already mentioned the case of Sir Robert

Holmes, Vice-Admiral of the county of Southampton. To this we must add a case reported by Lord Coke,* where a bill was preferred in the Star Chamber against Sir Richard Hawkins, Vice-Admiral of the county of Devon. The bill charged that one William Hull and others were notorious pirates upon the high seas, and it showed what piracy they had committed; it further stated that the said R. Hawkins, knowing the same, did receive, abet, and comfort them within the body of the county, and for bribes and rewards suffered them to be discharged.

Sir Leoline Jenkins also thought proper to write a letter of censure to a certain Honourable Mr. B., a Vice-Admiral, who in 1680, appears to have acted in an arbitrary manner towards the master of a ship, which had been wrecked on the coast of the county of which he was the Vice-Admiral.

Sir Leoline Jenkins says:—†

* Coke's Reports, VI., 462.
† Wynne, Life of Sir L. Jenkins, Vol. II., p. 717.

"Having seen the contract that your letter to me of the 31st of March last mentions, and also having perused what you wrote to Mr. W. as well as to myself, I think myself bound to tell you, that the contract is absolutely void. The Master had no power in this case to sell anything, but what was merely his own in property; he could sell nothing that was his owner's, or his freighter's. Besides, the contract is *ipso facto* null and rescinded by the law, upon the account of the extortion on the buyer's, and the necessity on the seller's, side. Imagine, Sir, I beseech you, what a barbarous thing it would be in me, for example, if I finding my neighbour and his horse fallen into a ditch, did not help him out but upon exacting of half the value of his horse, which would infinitely exceed my pains. I do most readily allow, that for attendance, loss of time, and painstaking, a *quantum meruit* is due by law; the rest is extortion and is the more inhuman in that it adds extremity to the loads of the afflicted. I do not exaggerate; I write but what I take to be the Law of this Land. I do not remember Sir E. Coke (as you have been advised) touches anywhere upon this point; he determines indeed, that the judgment of *Wreccum Maris* (and the case in hand is nothing to it) belongs to the Common Law, but not a word that I can call to mind of Salvage in any case as this is. But if he had so determined I must take leave to say, that if this had been the case of a Foreigner (this in Question seems to of an Irishman who cannot have recourse to other tribunals than those of the King's Majesty) I say, had it been the case of a Spaniard, or Hollander, and

that a Verdict had passed in Westminster for the validity of such a contract as this is, and that the Spaniard or Hollander could not have had his Ship or his Goods restored to him by such a buyer, the King, and all his subjects of these three Kingdoms, would have been justly liable to letters of Marque and Reprisals; and consequently have been forced to answer it with five hundred times the value of such a ship and cargo as this is; but without any other remedy on our side than counter Reprisals, or an open War. Both which, I am sure, every good subject ought to avert and prevent all he can from his King and Country. As for your objection, Sir, that you have undertaken a very ill province if your Commission of Vice-Admiral entitles the Merchants to your service at a hackney rate; I have this to say, that a Justice of Peace on land hath but a very maigre employment in several parts of his duty, especially those for preserving the public peace, and men's particular properties against riots and routs, and yet they (men of honour and probity, I mean), never complain of it; a Vice-Admiral is plainly such another officer in relation to the sea, and under the same obligations with those at Land; that is, he represents the King's part in preserving his Subjects and Allies from violences, most especially in the distresses. Yet in some things every Vice-Admiral will confess that he hath a better prospect to a lucky hit than a Justice of Peace at land hath. Besides Vice-Admirals in England in ancient Times, being persons of great figure in their County, used to lay out themselves and their pains for saving the King's Subjects,

their Allies, and their goods respectively, as men that were appointed to relieve the miseries of strangers, and that regarded the peace, the honour and the justice of the Nation. Upon the whole matter, I must take leave to say, that your Deputy, in making such a contract in your Name hath not had that regard he owes to your own credit, to the honour and service of the King, and to the justice and interest of the Nation; (interest, I say) by reason the Navigation of our own country Ships upon Foreign Coast is so highly considerable, and subject to the like casualties; and I think you can do no less than revoke your deputation to him.—I am, &c., LEOLINE JENKINS."

It was by no means uncommon for the Crown, from time to time, to exempt, by charter, a City or Borough from the Admiralty jurisdiction, and to confer a special jurisdiction on such city or borough of trying its own Admiralty cases. Two examples will suffice.

A Latin Charter of Henry IV. exempts the mayor and commonalty of Bristol from the power and jurisdiction of the Admiralty of England. The Charter in question was confirmed by Edward IV. The Charter of Henry, after considering the many notable

services of the merchants of Bristol, and that the mayor and commonalty of that town had freely given the King £200 in his necessities, and that "many of the burgesses and merchants have been grievously vexed and disturbed by the lieutenants and ministers of our Admiralty of England to their great loss and burden," grants that the town of Bristol shall for ever be free from the jurisdiction of the Admiralty.* This was again confirmed by a Charter dated the 9th June, in the fourteenth year of Charles I., which grants to the mayor, burgesses, and citizens of Bristol, the right to hold courts and to determine matters relating to the Admiralty within the jurisdiction of the city.

Disputes evidently arose between the Vice-Admiral for the county of Somerset and the mayor, burgesses, and citizens of Bristol concerning the exercise of this privilege, for we find an order from the Commissioners for executing the office of Admiralty, dated 24th

* Barrett, "Hist. of Bristol," p. 175.

August, 1692, which refers to "a report of the late Attorney and Solicitor-General" on the claim of the magistrates of Bristol to Admiralty jurisdiction; and the order directs Sir Edward Philips, Bart., "Vice-Admiral of the county of Somerset and city of Bristol," to "execute Admiralty jurisdiction in the said city according as is mentioned in the aforesaid report." From these words it may fairly be inferred that the report of the law officers of the Crown was adverse to the claims of Bristol. And thirty-two years later, (viz., 9th July, 1720), we find that George Bubb Dodington, Esqre., was appointed Vice-Admiral not only of the county of Somerset, but also "of the city and county of Bristol," from which it would appear that the jurisdiction of the Admiralty in that city was still claimed by the Lords Commissioners.

Queen Elizabeth conferred an Admiralty jurisdiction on Great Yarmouth, by Charter. In 1608 James I. confirmed the same privilege. The jurisdiction extended from Winterton Naze to Eston Naze, "being

fourteen leuks or thereabouts," and in breadth "into the sea by the space of seven leuks eastward of all and singular the shores of the sea." These limits were wholly exempt from the jurisdiction of the Admiralty of England. The Bailiffs of the borough were ordered to hold an Admiralty Court every week; powers being bestowed on them similar to those of a Vice-Admiral. All fines and profits to accrue to the Corporation. The Admiral of England, and the Vice-Admiral, however, had full powers to impress mariners within the above limits. The Mayor, Recorder, and Steward of Norwich and Justices of the Peace of the Borough were permitted to form an Admiralty Sessions under Hen. VIII., cap. 15, for trying pirates and felons found within the above limits. This exclusive jurisdiction was abolished in 1835 by s. 108 of the Municipal Corporations Act.

The last Admiralty Sessions in Great Yarmouth was held in 1833 for the trial of pirates, *i.e.*, two seamen, who technically deserved that name, for stealing some goods

out of a ship upon the high seas within the Yarmouth jurisdiction.*

The report of the Commissioners appointed, in 1833, to inquire into the office of the judges of the Court of Admiralty contains certain recommendations concerning the Admiralty jurisdiction, which were carried into effect by the Statute 3 & 4 Vict., c. 65. By that Statute issues are tried at common law, by impannelling juries, and taking evidence *vivâ voce*, instead of by secret examinations in writing according to the practice of the civil law. This Statute, as we have before mentioned, has recast the civil jurisdiction of the Admiralty Court. The power, nevertheless, of appointing Vice-Admirals of counties, or of the coast, is expressly reserved by 26 Vict., c. 24 (A.D., 1863), which enacts that nothing therein "shall be taken to affect the power of the Admiralty to appoint any Vice-Admiral, or any Judge, Registrar, Marshal, or other officer

* Manship's "History of Great Yarmouth," p. 261; see also *passim* "Continuation of Manship's History," by C. J. Palmer.

of any Vice-Admiralty Court, as heretofore, by warrant from the Admiralty, and by Letters Patent issued under Seal of the High Court of Admiralty of England."

It may be well to add to the foregoing dissertation that, when a question of Civil Law arose in the Common Law courts, it was the practice to desire the presence of one or more (but generally two) doctors of civil law, or advocates, to explain the question to the court. This was commonly termed "to call in a pair of doctors." This practice is well illustrated in the case of *Greenway* v. *Barber* (Godbolt R., p. 260).

CHAPTER VI.

VICE-ADMIRALS OF SCOTLAND.

WITH regard to the Admiralty of Scotland, the Lord High Admiral of that kingdom had anciently very extensive powers and jurisdictions, both in a political and judicative capacity, which were exercised by a person designated the Judge of the High Court of Admiralty. They were the King's lieutenants and justices-general upon the high seas, and the coast and kingdom; and in this court all treaties of commerce with foreign nations were recorded, all embargoes in time of war were laid on by its authority, and all letters of marque and reprisal were expeded under its seal. It had likewise a radical privative

jurisdiction in all maritime and mercantile affairs, both civil and criminal. Some doubts, however, having arisen with respect to the jurisdiction of this court, the limits and extent thereof were at length fixed and ascertained by Statute, in 1681, cap. 82, the tenor whereof follows:—

Our Sovereign Lord, considering that the clearing and establishing the jurisdiction of the High Admiral of this kingdom will greatly tend to the advancement and encouragement of trade and navigation; therefore His Majesty, with advice and consent of the Estates of Parliament, doth ratify and approve the fifteenth Act of the twelfth parliament of King James the Sixth, in the whole heads, clauses, and articles of the same; and decerns and declares the High Court of Admiralty to be a sovereign judicature in itself, and of its own nature to import summar execution. And statutes and declares, That the said High Admiral, as he is His Majesty's lieutenant and justice-general upon the seas, and in all ports, harbours, or creeks of the same, and upon fresh waters or navigable rivers below the first bridges, or within the floodmarks, so far as the same does or can at any time extend; so the said High Admiral hath the sole privilege and jurisdiction in all maritime and seafaring causes, foreign and domestic, whether civil or criminal, whatever within this realm, and over all persons as they are concerned in the same:

And prohibits and discharges all other judges to meddle with the decision of any of the said causes in the first instance, except the great Admiral and his deputes allenarly: And statutes, ordains, and declares, that it is the privilege of the said High Admiral, to cause parties become enacted, and find caution, not only for compearance, but for performance of the acts and sentences of his court; and that he may punish all breakers of his arrestments, and resisters of his officers in the execution of his precepts; and apply the fines and amerciaments to his own use, conform to the laws of the kingdom. And further statutes and declares, That the high court of Admiralty is a supreme court; and that the decreets and acts of all other inferior courts of Admiralty are subject to the review and reduction of the said High court of Admiralty. And for the more ready and quick dispatch of justice in maritime and seafaring causes, foreign and domestic, whether civil or criminal, within this realm, and over all persons in so far as they are concerned in the same, both to natives and strangers, our Sovereign Lord, with advice and consent foresaid prohibits and discharges all advocations in the foresaid causes, from the said court of Admiralty to the Lords of Session or to any other judges whatsoever, in all time coming; and that no suspension or other stop to the execution of the decreets or acts of the said court of Admiralty be passed by the Lords of Sessions, at any time hereafter, except by the whole Lords *in præsentia* in time of session, and by three of the said Lords in time of vacance met together to that effect; and that, if any suspensions or

stops shall happen to be passed in manner foresaid, the same be summarily discussed upon a bill, and be privileged and exeemed from the ordinary course of the roll; and if, upon discussing thereof, the same shall be found to have been unjustly and maliciously raised, that the said High court of Admiralty may, upon the application made by the parties concerned, modify and decern the damages they have sustained by the said suspensions, and stops of execution of their acts and decreets, attour the expences of plea before the Lords of Session, which is to be modified by the said Lords of Session. As also, His Majesty, with advice and consent foresaid, statutes and ordains, That it shall be lawful and competent to the said court of Admiralty, to review their own decreets and sentences, if there be just occasion for the same. And His Majesty, with the advice and consent foresaid decerns and declares, That it is the sole right and privilege of the High Admiral and his deputes, the judges of the High Court of Admiralty, to grant passes and safe conducts to all ships; and inhibits and discharges all others to grant the same, as they will be answerable upon the highest peril, And his Majesty, with advice and consent foresaid, casses, annuls, and rescinds, all and whatsoever laws, acts of parliament, or customs, contrary to or anyways inconsistent with this present act.

From this period, down to the Union of the two Parliaments, the judge of Admiralty exercised all the above recited powers and

jurisdictions; and as the preservation of the rights and jurisdictions of the court affected the trade and commerce of the nation, it was provided, in 1707, by Stat. 5, Ann, cap. 8, sect. 1, art. 19th:—

That all Admiralty jurisdiction shall be under the Lord High Admiral, or commissioners for the Admiralty of Great Britain: and the court of Admiralty now established in Scotland shall be continued; and all reviews, reductions, or suspension, of the sentences in maritime causes, competent to the jurisdiction of that court, shall remain in the same manner as now in Scotland until the Parliament of Great Britain shall make such regulations as shall be judged expedient for the whole United Kingdom; so as there be always continued in Scotland a court of Admiralty, such as in England, for determination of all maritime cases, relating to private rights in Scotland, competent to the jurisdiction of the Admiralty Court; subject nevertheless to such alterations as shall be made by the Parliament of Great Britain.

This Article also reserves all heritable rights of Admiralty, and Vice-Admiralty, to the proprietors as rights of property.*

*** An Admiralty jurisdiction was, and is, claimed in some Baronies as a heritable right. It is akin to the former jurisdiction of the heritable Sheriff.**

The jurisdiction and privileges formerly competent to this court, were, since the Union, exercised by a Lord High Admiral or Vice-Admiral appointed by the Crown, who granted commissions to inferior Admirals during pleasure. By the aforesaid Act of 1681, the jurisdiction of the High Court of Admiralty extends to all maritime causes; and so comprehends questions of charter party, freights, salvages, wrecks, bottomries, policies of insurance, and, in general, all contracts concerning the lading or unlading of ships, or any other matter to be performed within the verge of the Admiral's jurisdiction; also all actions for delivery of goods sent on ship board, or for recovering their value, or where the subject of the suit consists of goods transported by sea from one port to another. All these causes were privative to the said court, and were brought before it *primâ instantiâ*. Thus, though the court of session might review the Admiral's decrees by suspension, it could not carry a maritime action from him

by advocation; and even when causes depending before inferior Admirals were brought by advocation before the Court of Session, they used to remit them to the High Admiral, who is declared by the Statute sole judge in the first instance. The Lord High Admiral of Scotland held his office from the Crown, during his Majesty's pleasure; and had the appointment of the offices of judge, clerk, and all the subordinate admirals in Scotland.*

The Admiralty jurisdiction in Scotland was further regulated by the Statute 1 and 2 Geo. IV., c. 39. It was abolished by the Statute 1 Will. IV., c. 69. By the latter Statute the civil jurisdiction of the Admiralty is transferred to the Court of Sessions, except in cases not exceeding £25 in value. The criminal jurisdiction is transferred to the Court of Justiciary and Sheriff Courts.† Jurisdiction in prize matters is transferred

* *Judicial Proceedings before the High Court of Admiralty in Scotland*, by Frazer, 1814.

† 11 Geo. IV., and 1 Will., c. 69.

to the High Court of Admiralty in England.*

The following cases illustrate the former proceedings in the Courts of the Vice-Admirals—otherwise called Admirals Depute—of Scotland during the last century.

An arrestment was objected to as used in Edinburgh by virtue of precept of the Admiral Depute of Leith, the objectors insisting that he had no jurisdiction in Edinburgh. The jurisdiction was sustained in the Court of Sessions, it being proved that the Admiral Depute was in the custom of exercising his jurisdiction over the inhabitants of Edinburgh. The Lord Provost, magistrates, and town council of the city of Edinburgh, and their deputies, have in their character of admirals, a power to sit and judge not only within the town of Leith and shore thereof, but also within the city of Edinburgh itself, as appears by a charter of James VI., dated at Whitehall 3rd April,

* 6 Geo. IV., c. 120.

1616, and specially confirmed by another, granted by Charles I. In pursuance of which powers it appears, from the diet books of the Admiralty Court of Leith, that such courts have been actually held in Edinburgh, where the proceedings went on in the same manner as in Leith. Thus it appears, by an extract from the Admiral Depute's diet books, that on the 2nd September, 1707, the Court was adjourned, and ordained to meet at the High Council House of Edinburgh the day following, "and the Judge ordains procurators, parties, and others concerned, to attend there accordingly." In consequence of this adjournment the Court did actually sit and proceed to business in the High Council House of Edinburgh, 3rd September, 1707. Another instance of this Court being held in the High Council House of Edinburgh occurs on 7th September, 1720, where business went on in the ordinary course. Many more instances might be shown, had not many of the books and records of this Court been destroyed in the year 1745 by the rebels, who

kept their guard in the tolbooth of Leith, where that Court commonly met.*

In another case the jurisdiction was discredited. One M'Cleiry, in July, 1774, informed the chargers (Bengo and another) that he had 200 dozen of dry calfskins, of which they agreed to take 150 dozen at the usual commission and charges. The skins were not sent, upon which the chargers brought an action against the defender (M'Cleiry) before the Judge Admiral Depute for the district of the river and firth of Clyde, concluding for damages in being disappointed in their bargains, and also to relieve them of two bills for £154 16s. 10d., for which they had got no value, but which he had drawn upon them as the price of the skins. On appeal to the Court of Sessions, the Lords found that the Admiral Depute had no jurisdiction in a case purely mercantile.†

* *Craig* v. *Jamieson*. Dec. of Courts of Sessions. Vol. 17-18, p. 7518.

† *Bengo and others* v. *M'Cleiry*. Dec. of Court of Sessions. Vol. 17-18, app. part 1., No. 2.

Since the Union of the two Parliaments (1707), Vice-Admirals of the Coast appear to have been appointed by the High Court of Admiralty of England for Scotland, for the West Coast of Scotland, and for the Orkneys and Shetland. In 1707, the Earl of Wemyss was Vice-Admiral for Scotland, and the Earl of Morton was Vice-Admiral for the Orkneys and Shetland. In 1729 the Earl of Stair, in 1733 the Earl of Moreton, and in 1737 the Earl of Finlator were respectively Vice-Admirals of the Coast for Scotland. In 1854 the Marquis of Breadalbane was Vice-Admiral for Argyleshire and the West Coast of Scotland, and Mr. W. E. S. Aytoun held the same office for the Isles of Orkney and Shetland. The Duke of Argyll is at present Vice-Admiral for Argyleshire and the West Coast of Scotland; the other Vice-Admiralties are vacant.

CHAPTER VII.

VICE-ADMIRALS OF IRELAND AND OF BRITISH POSSESSIONS.

IT is said that there never was a Lord High Admiral for Ireland distinct from that of England. Spelman tells us that when the office in England was held under three admirals (about the close of the reign of Edward I.) a certain Irish knight was Admiral of the West and the parts thereof, but not particularly or exclusively of Ireland, and that Ireland was usually included in the commission to the Lord High Admiral of England. In 1413 Sir Thomas Beaufort, then Earl of Dorset, was re-appointed Admiral of England, *of Ireland*, and Aquitaine,

and of Picardy for life.* It is evident, therefore, that at that date Ireland had no distinct Lord High Admiral; but Letters Patent of 1335 are extant which appoint an Admiral for Ireland in the reign of Edward III. There has been an *instance* Court of Admiralty in Ireland from time immemorial. This Court was placed on a new footing in 1782. It is the High Court of Admiralty of Ireland; the Judge of that Court is termed "Judge of the High Court of Admiralty of Ireland, or Commissary in Maritime affairs, residing at Dublin." This Judge has power "ad cognoscendum et procedendum in quibuscunque causis et negotiis civilibus et maritimis, tam de officiis mero, mixto, vel promoto, quàm ad quarumcunque partium *instantiam* in curia Admiralitatûs nostræ in regno nostro Hiberniæ." There was an appeal from this Judge to the High Court of Admiralty in England; this appeal was by the Act of Union (1800) directed to be to the Delegates

* 1 Hen. V., Rot. Pat., m. 12.

in Chancery in Ireland. There are four Vice-Admirals for Ireland; one for each Province. They are quite independent of the Instance Court above mentioned, and hold their powers direct from the High Court of Admiralty of England. In 1660 Sir George Wentworth, Knight, was Vice-Admiral of the Province of Leinster. In 1691, Gustavus Hamilton, Esqre., was Vice-Admiral of the Province of Ulster, Sir Robert Southwell, Knt., was Vice-Admiral of the Province of Munster, Henry Wallop, Esqre., was Vice-Admiral of the Province of Leinster, and Sir Oliver St. George, Knt., was Vice-Admiral of the Province of Connaught. In 1854 the Vice-Admirals were as follows:—the Earl of Howth for the Province of Leinster, the Earl of Listowel for the Province of Munster, the Marquis Conyngham for the Province of Ulster, and the Marquis of Clanricarde for the Province of Connaught.* The Letters

* The present Vice-Admirals for Ireland are: for the Province of Leinster, the Marquis of Drogheda, and for the Province of Ulster, the Marquis Conyngham. The Vice-Admiralties of Munster and of Connaught are vacant.

Patent constituting them are in the same form, in every respect, as those constituting Vice-Admirals for England; the Vice-Admirals certify to the Judge of the High Court of Admiralty in England; nor is any mention made in these Patents of the Instance Court in Ireland. Indeed their jurisdiction appears to be much greater than that of the Instance Court.

Vice-Admirals, when appointed in British possessions abroad, were and still are appointed by Letters Patent in the same manner, and in the same words, as Vice-Admirals for England, but the limits and extent of their jurisdiction were in some instances amplified. Thus, Lionel Copley, Esqre., governor of "the province of Maryland, in America," was appointed, in 1691, to the further office of Vice-Admiral of the province, "and of and in all the seas and coasts of his said government," a formula which does not occur in any of the Letters Patent granted to Vice-Admirals in England. Benjamin Fletcher, Esqre., Captain-General and Governor-in-

Chief of the province of New York, was appointed on the 26th February, 1692, to be Vice-Admiral of "the province of New York and the territories depending thereon in America, that is to say, the colonies of East and West Jersey, the province of Pensilvania and country of Newcastle, and all the tracts of land and territories depending thereon." The Letters Patent granted in 1692 to William Beeston, Esqre., Captain-General and Governor of the island of Jamaica, to be Vice-Admiral of the island "and of the territories belonging thereto," do not contain the ordinary exception that the Vice-Admiral shall not appoint the judge, register, and marshal of his Vice-Admiralty. Vice-Admiral Beeston, therefore, had the power, under the usual clause, of appointing necessary officials to constitute the above mentioned officers. It appears that the ordinary exception in the Letters Patent was purposely omitted, that he might exercise the power, and it is probable that this Vice-Admiral appointed

the judge, register, and marshal of his Vice-Admiralty.

With reference to the American sea board, it may further be stated that Sir William Phipps was appointed Vice-Admiral for the "province and territory of Massachusets Bay, in New England," on the 21st September, 1691, and that Sir Edmond Andros, lieutenant and governor-general of "the colony and dominion of Virginia, in America," was similarly appointed Vice-Admiral in the same year. The tenor of these Letters Patent, as it has before been mentioned, is the same as that of the Letters Patent of Vice-Admirals in England.

The Author here takes leave of the Reader. The information in the foregoing pages has been obtained with much difficulty; indeed, had it not been committed to print in this century, it is far from unlikely that in another fifty years it might have been impossible to have obtained it. Sufficient has, however, been collected to show that the Vice-Admiral of the Coast was, and is, in the three Kingdoms,

not a mere myth, or supposititious personage, but a very useful officer of a particular jurisdiction of the Crown, and that he may at any time at the desire of the Lords Commissioners of the Admiralty (barring always Statutory obstruction), be entrusted with the same important duties as of yore.